
Introduction to Real Estate Practice

Reference Manual
Volume No. 21-131

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**OHIO STATE BAR ASSOCIATION
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Member satisfaction, professionalism,
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Our Goal

To make membership in the Ohio State
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Lawyers.

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Introduction to Real Estate Practice

Vol. # 21-131

6.0 CLE Credit Hours; 6.0 NLT Hours

Thursday, April 22, 2021

Live Interactive Webinar

This presentation is a live interactive webinar. If you have a question during the presentation, please submit it via the chat box.

The Supreme Court Commission on CLE has requested that we advise you that during this seminar, phones should be muted or turned off. If you must take a call during the presentations, please take the call outside of the room.

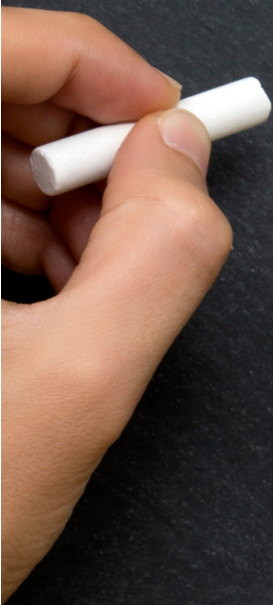
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The amount of CLE credit you are eligible to receive may be reduced if you are absent during the seminar. If you need to leave during the seminar, please make the appropriate deduction from your request for CLE credit.

CLE regulations require that we submit requests for credit within 30 days of the date of the seminar or be assessed a late fee. If you leave without completing the appropriate paperwork, your credit will not be reported.

8:30	Residential Real Estate Transactions, Closings, CFPB, and TRID William D. Fergus Jr., Esq.; Northwest Title Family of Companies, Inc.; Columbus
10:00	Break
10:15	Sale and Purchase of Commercial Real Estate Jacinto A. Núñez, Esq.; Vorys, Sater, Seymour and Pease LLP; Akron
11:15	Basics of Landlord Tenant Law Jennifer S. Bock, Esq.; Bock Legal Services, LLC; Bellbrook
12:15	Lunch
12:45	Commercial Leasing: Soup to Nuts Steven J. Davis, Esq.; Thompson Hine LLP; Dayton
1:45	Break
2:00	Tax, Title, and Liens: Residential and Commercial Gregory S. Shak, Esq.; Oxford Commercial Title Agency; Columbus
3:30pm	Conclusion



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Speaker Biographies

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Bock Legal Services, LLC
Bellbrook, Ohio

Ms. Bock received her JD and LLM from the University of Dayton School of Law where she was an officer in the Intellectual Property Society, the Constitutional Law Society, and Phi Alpha Delta, a law fraternity dedicated to community service. She was admitted to the Ohio Bar in May 2013 and is also licensed to practice in the Southern and Northern Districts of Ohio. Ms. Bock practices landlord/tenant law, collections, and debt settlement. She is also Senior Vice President to four companies that focus on debt settlement. Ms. Bock was selected to Rising Stars for 2019, a peer-designation-only awarded to a select number of accomplished attorneys in each state. She is fully committed to her community, giving back to organizations such as United Rehabilitation Services, Equitas Health (formerly the Aids Resource Center), the Leukemia and Lymphoma Society, PBS, and the Artemis Center, among others. Ms. Bock has committed to provide pro bono work on a monthly basis. For additional information, please visit <https://bocklegalservices.com>.

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Mr. Davis received his AB from Oberlin College and his JD from Duke University School of Law. His professional memberships include the Ohio State Bar Association, Dayton Bar Association, National Association of Industrial and Office Professionals, and American Bar Association. Mr. Davis is Counsel in his firm's real estate practice group. He focuses his practice on the acquisition, financing, sale, and leasing of commercial real estate, as well as construction contracts and development matters. Mr. Davis has been named to Best Lawyer's in America for five consecutive years. He is also a LEED Green Associate. Mr. Davis is a frequent lecturer on topics in his areas of practice. For additional information, please visit www.thompsonhine.com.

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Mr. Fergus is a partner with the Holfinger Stevenson Law Firm, Ltd. in Columbus, Ohio, and is General Counsel to the Northwest Title Family of Companies, Inc. He is an OSBA Certified Specialist in Residential Real Property Law. Mr. Fergus also practices in the areas of business law, estate planning, and probate law. He previously served as corporate counsel for a variety of companies, including a large independent land title agency and two communications companies. Mr. Fergus is a frequent lecturer for continuing education programs on real estate law. He is a member of the Columbus and Ohio State bar associations and is a member of the Real Property Subcommittees of each, and he serves as Secretary of the OSBA Real Property Section Council. Mr. Fergus holds a bachelor's degree from Ohio University, a master's degree from The Ohio State University, and graduated *magna cum laude* from Capital University Law School. For additional information, please visit www.holfingerlaw.com.

Jacinto A. Núñez, Esq.

Vorys, Sater, Seymour and Pease LLP
Akron, Ohio

Mr. Núñez received his BM from the University of Rochester Eastman School of Music, his Master of Music Education and a Master of Music Performance from The University of Akron, and his JD, *magna cum laude*, from The University of Akron School of Law, where he was a citations editor and an assistant editor of *The Akron Law Review*. Currently he is a partner in the Akron office of his firm where he is a member of the

finance, energy, and real estate group. Mr. Nùñez advises clients on many aspects of commercial real estate transactions, including acquiring and selling real estate; ground, retail, and office leasing; development; financing; and other real estate matters. In addition to his general real estate practice, he is actively involved in the firm's economic development incentives practice. Mr. Nùñez is a member of the Ohio State Bar Association and serves as a member of the Real Property Section Council. For additional information, please visit www.vorys.com.

Gregory S. Shak, Esq.

Underwriting Counsel

Oxford Commercial Title Agency LLC

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Mr. Shak received his BS from The Ohio State University and his JD from Capital University Law School. He also is licensed as a Title Agent and Patent attorney and has practiced in Ohio since 2013. Mr. Shak previously served as Director of Operations for a commercial title agency in Central Ohio while also working part-time as an attorney for an affiliated law firm that focused on title litigation for the nation's top underwriters. He also served as Commercial Underwriting Counsel for the Commercial Division at Northwest Title Family of Companies, Inc. Mr. Shak is now the Underwriting Counsel for Oxford Commercial Title Agency, LLC, where he oversees large commercial transactions of all types and sizes, resolving complex title issues and underwriting multimillion-dollar development projects with many moving parts.

Chapter 1: Residential Real Estate Transactions: Representing Buyers, Sellers, and Brokers

William D. Fergus Jr., Esq.

OSBA Certified Specialist in Residential Real Property Law


Holfinger Stevenson Law Firm, Ltd.

Northwest Title Family of Companies, Inc.


Columbus, Ohio

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NORTHWEST
FAMILY OF COMPANIES **Title**

**Residential Real Estate Transactions:
Representing Buyers, Sellers and
Brokers**


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1

CLASS GOALS

- Familiarize attorneys with issues common to residential real estate transactions throughout Ohio.
- Discuss different contract models, customs and practices in major Ohio residential real estate markets.
- Introduce attorneys to Ohio deed drafting principles.



2

RESIDENTIAL REAL ESTATE IS DIFFERENT!

- Sophistication of parties
(It's PERSONAL!)
- Real estate agents draft contracts
- In Ohio, all real estate is local!
- Federal law overlay:
 - TILA
 - RESPA
 - TRID



3

INTERESTS OF PARTIES AND OTHER PLAYERS:

- Buyer:
 - Contracting for a home
 - Free of unknown defects
 - “Marketable Title” clear of liens and encumbrances
 - Financing on reasonable terms
 - Time issues

4


- Seller:
 - Contracting for money
 - Certainty (probably buying another home)
 - Finality
 - Time issues
- Real Estate Brokers/Agents:
 - Sales commission
 - Repeat business/referrals

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- Lender
 - Evolving legal/regulatory environment
 - Local lenders vs. Regional/National lenders




6


- 
- Title Agent (settlement services provider)
 - Source of business: Brokers/Agents
 - Who do they work for?
 - Evolving legal/regulatory environment

7


LEGAL CONSIDERATIONS

- 
- *Gustafson v. V.C. Taylor & Sons, Inc.* (1941): A real estate broker is not involved in the practice of law by merely filling pre-printed blank forms for the purchase of real estate. Supplying simple factual material such as the date, the price, the name of the purchaser, the location of the property, the date of giving possession, and the duration of the offer, does not require skill peculiar to one trained and experienced in the law and thus does not involve the practice of law.

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- 
- ▶ **Ohio Rev. Code Section 4735.62:** “In representing any client in an agency or subagency relationship, the licensee shall be a fiduciary of the client and shall use the licensee's best efforts to further the interest of the client including, but not limited to, doing all of the following: * * * (G) Advising the client to obtain expert advice related to material matters when necessary or appropriate * * *”
 - ▶ **Realtor Canons of Ethics Section II, Art. 8:** “The licensee should recommend that title be examined and legal counsel be obtained.”

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- 
- ▶ **Statute of Frauds (RC 1335.05):** Contracts for the purchase/sale of real property must be in writing and signed “by the party to be charged”
 - ▶ **Merger:** “This contract constitutes the entire agreement and there are no representations, oral or written, which have not been incorporated herein”

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Identifying the property

Sounds simple, BUT:

- Not in platted subdivision?
- Rural property?
- Condo with separate garage/parking space(s)?

SOLUTION: Use parcel tax ID number(s)



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Attorney Review/Approval

- Why important?
 - Effect of *Gustafson v. V.C. Taylor & Sons, Inc.*
- Grounds for disapproval
- Duty to suggest remedy?



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Financing Concerns

SELLER:

- ▶ there is some reasonable chance that the buyer can get financing at the time of contract acceptance.
- ▶ buyer is making a good faith effort to obtain financing.
- ▶ if the buyer can't get financing, the contract is terminated as soon as possible so the property can go back on the market.

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Financing Concerns

BUYER:

- time to obtain financing on terms that are reasonably acceptable
- ability to get out of the contract if financing can't be obtained on the terms applied for following a good faith effort to obtain financing
- financial terms of the deal aren't changed to the buyer's detriment at the last minute by an unfavorable lender appraisal

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Financing

ISSUES:

- Is buyer's performance contingent upon obtaining financing?
 - Is buyer using good faith effort to obtain?
How do we know?
- Conventional vs. FHA, VA, USDA
- Prequalification and commitment letters

CASH DEALS: Proof of funds?



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Appraisals

- Purpose? (Who is requesting?)
- Contingency?
- **WAIVER, in whole or part?**
- Effect of failure to appraise for purchase price
 - Renegotiation? Termination? Waiver?



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Real Estate Taxes and Assessments

- Typically prorated at closing
 - Short proration (Dayton & Toledo markets) v. Long Proration
- CAUV Recoupment
- Assessments (who pays?)
- Community Development Charges

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Columbus Contract Provision:

4.2 The community development charge, if any, applicable to the premises was created by a covenant in an instrument recorded at (insert county) _____, Vol. _____, Page number _____ or Instrument number _____. (Note: If the foregoing blanks are not filled in and a community development charge affects the premises, this contract may not be enforceable by the Seller or binding upon the Buyer pursuant to Section 349.07 of the Ohio Revised Code.)

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Fixtures and Equipment

- Legal definitions
- How do we tell which is which? **What conveys with the premises?**
 - Case Law
 - Practical problems
- What about leased equipment?

19

Inspections

- Importance of inspecting
- Custom & practice varies throughout the state
- Usually, but not always, a two-step process - in Columbus:
 - “Specified Inspection period”
 - “Agreement to remedy period”
- What happens when a remedy is requested, and the parties fail to agree? (Columbus v. Athens as examples)

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Inspections (continued)

- Condominiums and homeowner associations:
 - Legal background (nickel tour!)
 - RC Chapters 5311 and 5312
- Importance of document review

21

Inspections (continued)

IMPORTANT DOCUMENTS TO REVIEW:

- Condominium Declaration and/or Deed Restrictions, and Bylaws of the owners' association (condominium or homeowners'), including all amendments to the Declaration or Deed Restrictions except amendments that only increase the number of units or homes subject to the Declaration or Deed Restrictions;
- Condominium Board / Management Company Contact: Name, phone number, email;
- Contact information for any other mandatory membership association if applicable: Name, phone number, email;

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Inspections (continued)

IMPORTANT DOCUMENTS TO REVIEW:

- A statement from the association regarding this home/unit, confirming when the next (assessment) payment is due, the amount of such payment, the amount of any pending special assessment(s), and that the account is current;
- Association Initiation Fee, Reserve Contribution, and Association Transfer Fee;
- Minutes from the last 3 meetings of the directors or trustees of the owners' association;
- Minutes from the last meeting of members of the owners' association;

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Inspections (continued)

IMPORTANT DOCUMENTS TO REVIEW:

- Most recent version of unrecorded Rules and Regulations;
- **Current Financial Statement showing the nature of the association's assets, including:**
 - **Most current balance sheets, income and expense statements, and budget; and**
 - **Copy of the most recent reserve study.**

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Deed (Columbus contract)

8.1 The Seller shall convey to the Buyer **marketable title** in fee simple by transferable and recordable general warranty deed, with release of dower, if any, or fiduciary deed, as appropriate, free and clear of all liens and encumbrances not excepted by this contract, and except the following:

- (a) those created by or assumed by the Buyer;
- (b) those specifically set forth in this contract;
- (c) zoning ordinances;
- (d) legal highways;
- (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with present lawful use; and
- (f) all coal, oil, gas and other mineral rights and interests previously transferred or reserved of record.

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Deed - Issues

- What about seller-owned subsurface interests? Third party owners? How far back to search title?
- **How do the parties know that seller is conveying “marketable title”?**
- Attorney opinions of title v. title insurance

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Title Insurance Issues

1. WHO PAYS?

- Base Policy (Owners v. Homeowners policy)
- Endorsements, removal of standard exceptions

2. Delivery of title commitment

3. Objections?

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Damage or Destruction of Premises

- **DANGER!** Most Realtors rarely encounter this situation.
- Most contracts specify that the seller is liable for damage/destruction of premises prior to closing, even though the buyer has acquired an equitable interest in the property via contract.
- Insurance money?
- Time for owner to complete repairs?

28

Earnest Money Deposit Issues

1. Is earnest money necessary?
2. How much is enough?
3. When should the deposit be made?
4. Effect of RC 4735.24
5. Title agent as escrow holder?

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Residential Property Disclosure

- Most, but not all sellers must complete
- No time limit in current form
- Consequences of failure to provide
- Effect of false or incomplete representations
- Exceptions (**RC 5302.30(B)(2)**):

30

Residential Property Disclosure

- (a) A transfer pursuant to court order . . .
- (g) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;
- (l) A transfer that involves newly constructed residential real property that previously has not been inhabited;
- (m) A transfer to a transferee who has occupied the property as a personal residence for one or more years immediately prior to the transfer;
- (n) A transfer from a transferor who both has not occupied the property as a personal residence within one year immediately prior to the transfer and has acquired the property through inheritance or devise.

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Closing and Possession

- Pre-closing inspection
- Early possession for buyer?
- Post-closing possession for seller?

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Less Common Residential Transactions

- ❑ Multiple Offers
- ❑ New Construction
- ❑ Condominium Purchase
- ❑ Purchase from Financial Institution
- ❑ Purchase of Rural Property
- ❑ Non-traditional Sales (lease with option to purchase, land contract, owner financing, etc.)
- ❑ Dual Agency (*Hubbard Family Trust v. TNT Land Holdings, LLC, 2014-Ohio-772*)
- ❑ For Sale By Owner (you represent one of the parties)

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Residential Closings

- ❑ Round table vs. escrow closings
- ❑ Regulatory environment: TILA, RESPA and TRID
 - ❑ Intent to Proceed
 - ❑ Loan cost disclosure
 - ❑ Good Faith Estimate
 - ❑ RESPA Reg. Z (anti-kickback)
 - ❑ Closing Disclosure requirements (ask for an ALTA-1 Settlement Statement!)

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Deed Drafting 101

5302.04 All interest conveyed unless otherwise stated in instrument.

In a conveyance of real estate or any interest therein, all rights, easements, privileges, and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary is stated in the deed, and it is unnecessary to enumerate or mention them either generally or specifically.

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5302.06 General warranty covenants meaning and effect.

In a conveyance of real estate, or any interest therein, the words "general warranty covenants" have the full force, meaning, and effect of the following words: "The grantor covenants with the grantee, his heirs, assigns, and successors, that he is lawfully seized in fee simple of the granted premises; that they are free from all encumbrances; that he has good right to sell and convey the same, and that he does warrant and will defend the same to the grantee and his heirs, assigns, and successors, forever, against the lawful claims and demands of all persons."

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GENERAL WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that _____ [INSERT MARITAL STATUS], for valuable consideration paid, grant(s) **with general warranty covenants** to _____ the following REAL PROPERTY:

Situated in the State of Ohio, County of Franklin and City of Columbus:

Being Lot Number Thirty-five (35) of A.B. COIT'S KELTON AVENUE ADDITION, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, Page 112, Recorder's Office, Franklin County, Ohio.

Parcel I.D. No. _____
 Property Address: _____
 Tax Billing Address: _____

Except for the following and subject to all of which this conveyance is made: legal highways; zoning ordinances; real estate taxes and assessments which are now or may hereafter become a lien on said premises, including taxes which are or may be currently in arrears; covenants, conditions, restrictions and easements of record; and all coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record.

Prior Instrument Reference(s): Instrument No. _____ Recorder's Office, _____ County, Ohio.

EXECUTED this _____ day of _____, 2021.

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5302.08 Limited warranty covenants meaning and effect.

In a conveyance of real estate, or any interest therein, the words "limited warranty covenants" have the full force, meaning, and effect of the following words:

"The grantor covenants with the grantee, his heirs, assigns, and successors, that the granted premises are free from all encumbrances made by the grantor, and that he does warrant and will defend the same to the grantee and his heirs, assigns, and successors, forever, against the lawful claims and demands of all persons claiming by, through, or under the grantor, but against none other."

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LIMITED WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that _____ [INSERT MARITAL STATUS], for valuable consideration paid, grant(s) **with limited warranty covenants** to _____ the following REAL PROPERTY:

Situated in the State of Ohio, County of Franklin and City of Columbus:

Being Lot Number Thirty-five (35) of A.B. COIT'S KELTON AVENUE ADDITION, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, Page 112, Recorder's Office, Franklin County, Ohio.

Parcel I.D. No. _____
 Property Address: _____
 Tax Billing Address: _____

Except for the following and subject to all of which this conveyance is made: legal highways; zoning ordinances; real estate taxes and assessments which are now or may hereafter become a lien on said premises, including taxes which are or may be currently in arrears; covenants, conditions, restrictions and easements of record; and all coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record.

Prior Instrument Reference(s): Instrument No. _____ Recorder's Office, _____ County, Ohio.

EXECUTED this _____ day of _____, 2021.

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5302.10 Fiduciary covenants meaning and effect.

In a conveyance of real estate, or any interest therein, the words "fiduciary covenants" have the full force, meaning, and effect of the following words: "The grantor covenants with the grantee, his heirs, assigns, and successors, that he is duly appointed, qualified, and acting in the fiduciary capacity described in such deed, and is duly authorized to make the sale and conveyance of the granted premises, and that in all of his proceedings in the sale thereof he has complied with the requirements of the statutes in such case provided."

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FIDUCIARY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that _____ [TRUSTEE, EXECUTOR, ETC. of . . .], for valuable consideration paid, grant(s) **with fiduciary covenants** to _____ the following REAL PROPERTY:

Situated in the State of Ohio, County of Franklin and City of Columbus:

Being Lot Number Thirty-five (35) of A.B. COIT'S KELTON AVENUE ADDITION, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, Page 112, Recorder's Office, Franklin County, Ohio.

Parcel I.D. No. _____
 Property Address: _____
 Tax Billing Address: _____

Except for the following and subject to all of which this conveyance is made: legal highways; zoning ordinances; real estate taxes and assessments which are now or may hereafter become a lien on said premises, including taxes which are or may be currently in arrears; covenants, conditions, restrictions and easements of record; and all coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record.

Prior Instrument Reference(s): Instrument No. _____ Recorder's Office, _____ County, Ohio.

EXECUTED this _____ day of _____, 2021.

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5301.255 Memorandum of trust recording.

(A) A memorandum of trust that satisfies both of the following may be presented for recordation in the office of the county recorder of any county in which real property that is subject to the trust is located:

- (1) The memorandum shall be executed by the trustee of the trust and acknowledged by the trustee of the trust in accordance with section 5301.01 of the Revised Code.
- (2) The memorandum shall state all of the following:
 - (a) The name and address of the trustee of the trust;
 - (b) The date of execution of the trust;
 - (c) The powers specified in the trust relative to the acquisition, sale, or encumbering of real property by the trustee or the conveyance of real property by the trustee, and any restrictions upon those powers.

(B) A memorandum of trust that satisfies divisions (A)(1) and (2) of this section also may set forth the substance or actual text of provisions of the trust that are not described in those divisions.

(C) A memorandum of trust that satisfies divisions (A)(1) and (2) of this section shall constitute notice only of the information contained in it.

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5302.171 Affidavit for successor trustee.

Upon the death, resignation, removal, or other event terminating the appointment of a trustee of a trust, which trustee holds title to real property, the successor trustee or any co-trustee of the trust shall file with the county auditor and the county recorder of the county in which the real property is located, as soon as is practical, an affidavit reciting the name of the immediately preceding trustee and any co-trustees, the addresses of all trustees, a reference to the deed or other instrument vesting title in the trustees, and a legal description of the real property. The affidavit shall be recorded in the official records of the county recorder, and indexed in the direct and reverse indexes provided for in section 317.18 of the Revised Code.

The affidavit described in this section shall not be required if the original trust instrument naming the trustees and successors and containing relevant facts pertaining to the succession of trustees, or if a memorandum of trust in compliance with section 5301.255 of the Revised Code that contains relevant facts pertaining to the succession of trustees, is recorded in the office of the county recorder.

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5302.19 Tenancy in common.

Except as provided in sections [5302.17](#) , [5302.20](#) , and [5302.21](#) of the Revised Code, if any interest in real property is conveyed or devised to two or more persons, such persons hold title as tenants in common and the joint interest created is a tenancy in common.

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5302.17 Survivorship deed form.

A deed conveying any interest in real property to two or more persons, and in substance following the form set forth in this section, when duly executed in accordance with Chapter 5301. of the Revised Code, creates a survivorship tenancy in the grantees, and upon the death of any of the grantees, vests the interest of the decedent in the survivor, survivors, or the survivor's or survivors' separate heirs and assigns.

"SURVIVORSHIP DEED

..... (marital status), of County,
for valuable consideration paid, grant(s), (covenants, if any), to
..... (marital status) and (marital status), **for
their joint lives, remainder to the survivor of them**, whose tax-
mailing addresses are, the following real property:

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SURVIVORSHIP DEED

KNOW ALL PERSONS BY THESE PRESENTS, that _____ [INSERT MARITAL
STATUS], for valuable consideration paid, grant(s) with _____ covenants to
and _____, **for their joint lives, remainder to the survivor of them** the following REAL
PROPERTY:

Situated in the State of Ohio, County of Franklin and City of Columbus:

Being Lot Number Thirty-five (35) of A.B. COIT'S KELTON AVENUE ADDITION, as the same is numbered and
delineated upon the recorded plat thereof, of record in Plat Book 4, Page 112, Recorder's Office, Franklin County,
Ohio.

Parcel I.D. No. _____
Property Address: _____
Tax Billing Address: _____

Except for the following and subject to all of which this conveyance is made: legal highways; zoning ordinances;
real estate taxes and assessments which are now or may hereafter become a lien on said premises, including
taxes which are or may be currently in arrears; covenants, conditions, restrictions and easements of record; and
all coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record.

Prior Instrument Reference(s): Instrument No. _____ Recorder's Office, _____ County, Ohio.

EXECUTED this ____ day of _____, 2021.

46

2103.02 Dower.

A spouse who has not relinquished or been barred from it shall be endowed of an estate for life in one third of the real property of which the consort was seized as an estate of inheritance at any time during the marriage. Such dower interest shall terminate upon the death of the consort except:

(A) To the extent that any such real property was conveyed by the deceased consort during the marriage, the surviving spouse not having relinquished or been barred from dower therein;

(B) To the extent that any such real property during the marriage was encumbered by the deceased consort by mortgage, judgment, lien, except tax lien, or otherwise or aliened by involuntary sale, the surviving spouse not having relinquished or been barred from dower therein. If such real property was encumbered or aliened prior to decease, the dower interest of the surviving spouse therein shall be computed on the basis of the amount of the encumbrance at the time of the death of such consort or at the time of such alienation, but not upon an amount exceeding the sale price of such property.

In lieu of such dower interest which terminates pursuant to this section, a surviving spouse shall be entitled to the distributive share provided by section 2105.06 of the Revised Code.

Dower interest shall terminate upon the granting of an absolute divorce in favor of or against such spouse by a court of competent jurisdiction within or without this state.

47

GENERAL WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that _____ [INSERT MARITAL STATUS], for valuable consideration paid, grant(s) with general warranty covenants to _____ the following REAL PROPERTY:

Situated in the State of Ohio, County of Franklin and City of Columbus:

Being Lot Number Thirty-five (35) of A.B. COIT'S KELTON AVENUE ADDITION, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, Page 112, Recorder's Office, Franklin County, Ohio.

Parcel I.D. No. _____

Property Address: _____

Tax Billing Address: _____

Except for the following and subject to all of which this conveyance is made: legal highways; zoning ordinances; real estate taxes and assessments which are now or may hereafter become a lien on said premises, including taxes which are or may be currently in arrears; covenants, conditions, restrictions and easements of record; and all coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record.

Prior Instrument Reference(s): Instrument No. _____ Recorder's Office, _____ County, Ohio.

EXECUTED this _____ day of _____, 2021.

48

GENERAL WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that _____ [INSERT MARITAL STATUS], for valuable consideration paid, grant(s) with general warranty covenants to _____ the following REAL PROPERTY:

Situated in the State of Ohio, County of Franklin and City of Columbus:

Being Lot Number Thirty-five (35) of A.B. COIT'S KELTON AVENUE ADDITION, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, Page 112, Recorder's Office, Franklin County, Ohio.

Parcel I.D. No. _____
 Property Address: _____
 Tax Billing Address: _____

Except for the following and subject to all of which this conveyance is made: legal highways; zoning ordinances; real estate taxes and assessments which are now or may hereafter become a lien on said premises, including taxes which are or may be currently in arrears; covenants, conditions, restrictions and easements of record; and all coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record.

Prior Instrument Reference(s): Instrument No. _____ Recorder's Office, _____ County, Ohio.

EXECUTED this _____ day of _____, 2014.

49

5301.01 Acknowledgment of deed, mortgage, land contract, lease or memorandum of trust.

(A) A deed, mortgage, land contract as referred to in division (A) (21) of section 317.08 of the Revised Code, or lease of any interest in real property and a memorandum of trust as described in division (A) of section 5301.255 of the Revised Code shall be signed by the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or shall be signed by the trustee in the case of a memorandum of trust. The signing shall be acknowledged by the grantor, mortgagor, vendor, or lessor, or by the trustee, before a judge or clerk of a court of record in this state, or a county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgement and subscribe the official's name to the certificate of the acknowledgement.


50

STATE OF OHIO, COUNTY OF _____ SS:

The foregoing instrument was acknowledged before me and subscribed in my presence this _____ day of _____, 2021 by _____ (entity/title if appropriate).

Notary Public

This instrument prepared by:
William D. Fergus Jr., Attorney at Law
HOLFINGER STEVENSON LAW FIRM
1160 Dublin Road, Suite 500
Columbus, Ohio 43215
(614) 610-9908



51



Questions? (About Anything!)

Bill Fergus
Ph. (614) 610-9908
bfergus@nwttitle.com



52



Contract to Purchase

Adopted by Cincinnati Area Board of Realtors® and
Dayton Area Board of Realtors®

For exclusive use by REALTORS®.

This is a legally binding contract. If not understood, seek legal advice.

For real estate advice, consult a REALTOR®.



1 **1. PROPERTY DESCRIPTION:** I/We ("Buyer") offer to purchase from Seller ("Seller") the following described property:
2 Address _____ City/Township _____
3 Ohio, Zip Code _____, County _____, Further described as: _____
4 _____ ("Real Estate").

5 **2. PRICE AND TERMS:** Buyer hereby agrees to pay \$ _____
6 ("Purchase Price") for the Real Estate, payable as follows:

7 a) **EARNEST MONEY:** For purposes of this clause, time is of the essence. \$ _____
8 ("Earnest Money") shall be submitted for deposit with _____
9 within _____ calendar days of the Contract Acceptance Date, as hereinafter defined ("Contract"), in a trust account pending the
10 final settlement and conveyance of the purchase and sale of the Real Estate contemplated in this Contract ("Closing"), or returned
11 to the Buyer if this offer is not accepted in writing. Written acknowledgement of Earnest Money Deposit ☐ is included ☐ shall
12 be provided to Listing REALTOR® or Seller within _____ calendar days of the Contract Acceptance Date. If acknowledgement
13 of Earnest Money is not provided as stated herein, then Seller, by Seller's sole option, may, by written notice to selling
14 REALTOR® or Buyer, terminate this Contract. Any disbursement of Earnest Money shall be in compliance with Ohio R.C.
15 4735.24, which includes the following stipulations: The Earnest Money shall be disbursed as follows: (i) if the transaction is
16 closed, the Earnest Money shall be applied to Purchase Price (may be retained by brokerage and credited toward brokerage
17 commission owed) or as directed by Buyer or (ii) if either party fails or refuses to perform, or if any contingency is not satisfied
18 or waived, the Earnest Money shall be (a) disbursed in accordance with a release of earnest money ("Release") signed by all parties
19 to the Contract or (b) in the event of a dispute between the Seller and Buyer regarding the disbursement of the Earnest Money, the
20 broker is required by law to maintain such funds in his trust account until the broker receives (a) written instructions signed by the
21 parties specifying how the Earnest Money is to be disbursed or (b) a final court order that specifies to whom the Earnest Money is
22 to be awarded. If the Real Estate is located in Ohio, and if within two years from the date the Earnest Money was deposited in the
23 broker's trust account, the parties have not provided the broker with such signed instructions or written notice that such legal action
24 to resolve the dispute has been filed, the broker shall return the Earnest Money to the Buyer with no further notice to the Seller.
25 Both Buyer and Seller acknowledge and agree that, in the event of a dispute between Buyer and Seller as to entitlement of the
26 Earnest Money, the REALTORS® will not make a determination as to which party is entitled to the Earnest Money.

27 b) **BALANCE:** The balance of the Purchase Price shall be paid by wire transfer, certified, cashier's, official bank, attorney or
28 title company trust account check on date of Closing, subject to the terms of applicable law.

29 **3. FINANCING CONTINGENCY:** Buyer intends to use the Real Estate for the following purpose: ☐ Owner-occupied
30 ☐ Rental ☐ Other: _____

31 ☐ **CASH:** Buyer shall provide written confirmation of available funds on verifiable document from funding source within
32 _____ calendar days of the Contract Acceptance Date. If Buyer fails to provide such documentation, then Seller may, by
33 written notice to selling REALTOR® or Buyer, terminate this Contract. Buyer has the right to obtain an appraisal of the Real
34 Estate by a licensed appraiser within _____ calendar days beginning the day following the Contract Acceptance Date.

35 ☐ **CONVENTIONAL LOAN:** The Buyer's obligation to close this transaction is contingent upon Buyer applying for and
36 obtaining: (a) ☐ fixed ☐ adjustable or ☐ other first mortgage loan on the Real Estate, (b) in an amount not to exceed
37 _____ % of the Purchase Price, (c) at an interest rate ☐ at prevailing rates and terms ☐ not to exceed _____ %
38 (d) for a term of not less than _____ years or at a higher rate or shorter term agreeable to Buyer.

39 ☐ **FHA/VA:** The Buyer's obligation to close this transaction is contingent upon Buyer applying for and obtaining (a) ☐ FHA,
40 [(1) ☐ fixed or (2) ☐ adjustable] (including FHA closing costs) or ☐ VA (including VA funding fee) first mortgage loan in
41 the maximum allowable amount (b) at an interest rate ☐ at prevailing rates and terms ☐ not to exceed _____ %, (c)
42 for a term of not less than _____ years or at a higher rate or shorter term agreeable to Buyer. ☐ Buyer has been provided the
43 **FHA For Your Protection: Get a Home Inspection** disclosure. *When the Buyer is financing through FHA or VA, the Seller may
44 be required to pay for certain fees. Check with your lending institution. Whole house inspection fees may be paid by the VA Buyer,
45 but must be paid outside of the Closing. On FHA/VA contracts, the appraiser is not deemed to be a whole house inspector.*

46 ☐ **OTHER FINANCING: SEE ATTACHED ADDENDUM** _____
47 _____
48 _____

49 **Settlement Charges:** In addition to costs incurred in order for the Seller to fulfill the terms of the Contract and to provide
50 marketable title, Seller agrees to pay actual settlement charges on behalf of the Buyer, including, but not limited to, discount points,
51 closing costs, pre-pays and any other fees allowed by Buyer's lender in an amount not to exceed, _____.

Buyer's Initials Date/Time _____

Seller's Initials Date/Time _____

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52 **Financing Timeframe: IF BUYER FAILS TO PROVIDE CONFIRMATION THAT BUYER HAS COMPLETED ANY**
 53 **OF THE REQUIREMENTS OF THE FINANCING TIMEFRAME, AS SET FORTH IN SUBSECTIONS (a) THROUGH**
 54 **(c) below, THEN SELLER MAY, AT SELLER'S SOLE DISCRETION, BY WRITTEN NOTICE TO SELLING**
 55 **REALTOR® OR BUYER, TERMINATE THIS CONTRACT.**

56 (a) Buyer financing qualification letter based upon initial credit check and preliminary information provided by Buyer stating that
 57 such qualification ☐ is ☐ is not contingent upon the closing of Buyer's other real estate and ☐ is attached ☐ is not attached
 58 ☐ shall be provided within _____ calendar days of the Contract Acceptance Date.

59 (b) Buyer shall complete a loan application, which shall include providing selected lender, with "intent to proceed", including
 60 payment for appraisal (if necessary), within _____ calendar days of the Contract Acceptance Date and will make a diligent
 61 effort to obtain financing.

62 (c) Buyer or Buyer's lender shall notify Listing REALTOR® or Seller, in writing, that a loan approval has been obtained or waived
 63 within _____ calendar days of the Contract Acceptance Date.

64 **BUYER IS RELYING ON BUYER'S OWN UNDERSTANDING OF FINANCING TO BE OBTAINED AND PROCESSES**
 65 **REQUIRED BY A LENDER AS WELL AS THE LEGAL AND TAX CONSEQUENCES THEREOF, IF ANY.**

66 **4. APPRAISAL CONTINGENCY:** Buyer's obligation to close this transaction is contingent upon Real Estate appraising at or above
 67 final sales price of the Real Estate. Buyer has the right to obtain, at Buyer's expense, an independent appraisal performed by an appraiser
 68 licensed in Ohio. In the event the Real Estate does not obtain an appraised value (by either Buyer's or Lender's appraiser) equal to or greater
 69 than the Purchase Price, Buyer shall have the right to terminate this Contract by delivering written notice to Seller on or before the expiration
 70 of (i) the time-frame set forth in Section 3 above for obtaining an appraisal in connection with a cash sale or (ii) the time-frame set forth in
 71 Section 3 above for obtaining a loan approval (such applicable time period being referred to as the "Appraisal Contingency Period"). If
 72 Buyer does not deliver written notice to Seller that Buyer is terminating the Contract prior to the expiration of the Appraisal Contingency
 73 Period, then Buyer's right to terminate this Contract due to appraised value shall be deemed waived. **Seller shall have ALL utilities**
 74 **serving the Real Estate on during the appraisal inspection.**

75 **5. INCLUSIONS/EXCLUSIONS OF SALE:** The Real Estate shall include the land, together with all improvements thereon,
 76 all appurtenant rights, privileges, easements, fixtures, and all of, but not limited to, the following items if they are now located on
 77 the Real Estate and used in connection therewith: electrical; plumbing; heating and air conditioning equipment, including window
 78 units; bathroom mirrors and fixtures; shades; blinds; awnings; window rods; window/door screens, storm windows/doors;
 79 shrubbery/landscaping; affixed mirrors/floor covering; wall-to-wall, inlaid and stair carpeting (attached or otherwise); fireplace
 80 inserts/grates; fireplace screens/glass doors; wood stove; gas logs and starters; television and/or sound system mounting brackets
 81 (excluding televisions and/or sound system), aerials/rotor operating boxes/satellite dishes (including non-leased components);
 82 water softeners; water purifiers; central vacuum systems and equipment; garage door openers/operating devices; the following
 83 **built-in** appliances: ranges/ovens/microwaves/refrigerators/dishwashers/garbage disposers/trash compactors/humidifiers; all
 84 security alarm systems and controls; all affixed furniture/fixtures; utility/storage buildings/structures; inground/above ground
 85 swimming pools and equipment; swing sets/play sets; affixed basketball backboard/pole; propane tank/oil tank and contents
 86 thereof; electronic underground fencing transmitter and receiver collars; and parking space(s) number(s) _____ and
 87 storage unit number _____ (where applicable); **except the following: which are leased in whole or in part** (please check
 88 appropriate boxes); ☐ water softener; ☐ security/alarm system; ☐ propane tank; ☐ satellite dish; ☐ satellite dish components;
 89 **THE FOLLOWING ITEMS (WHICH ADD NO ADDITIONAL VALUE TO THE**
 90 **REAL ESTATE) ARE SPECIFICALLY INCLUDED WITH THE REAL ESTATE:** _____

91 **THE FOLLOWING ITEMS ARE SPECIFICALLY EXCLUDED FROM THE REAL ESTATE:** _____

94 **6. CERTIFICATION OF OWNERSHIP:** Seller certifies that Seller owns all of the items listed in Section 5 and that they will
 95 be free and clear of any debt, lien or encumbrances at closing (except as listed in Section 20 of this Contract). Seller also represents
 96 that those signing this Contract constitute all of the owners of the title to the real property and other items as listed in Section 5,
 97 together with their respective spouses.

98 **7. SELLER'S CERTIFICATION:** Seller certifies to Buyer that **to the best of Seller's knowledge:** The Real Estate (a) ☐ is
 99 ☐ is not located in a Historic District, (b) ☐ is ☐ is not subject to a maintenance agreement, (c) ☐ is ☐ is not located
 100 in a flood plain requiring insurance, (d) ☐ is ☐ is not subject to a municipal pre-sale inspection, disclosure, and/or certification
 101 of occupancy; if the Real Estate is located in a jurisdiction requiring housing inspection before transfer, Seller shall be responsible
 102 for completing and submitting the necessary application and will furnish to Buyer or Buyer's agent a copy of the resulting
 103 unconditional certificate on or before the date of Closing, (e) no orders of any public authority are pending, (f) no work has been
 104 performed or improvement constructed that may result in future assessments, (g) no notices have been received from any public
 105 agency with respect to condemnation or appropriation, change in zoning, proposed future assessments, correction of conditions or
 106 other similar matters, and (h) to the best of Seller's knowledge, no toxic, explosive or other hazardous substances have been stored,
 107 disposed of, concealed within or released on or from the Real Estate and no other adverse environmental conditions within the
 108 boundaries of the Real Estate affect the Real Estate except _____. Seller further certifies
 109 that, to the best of Seller's knowledge, there are no encroachments, shared driveways, party walls, property tax abatements or
 110 homestead exemptions affecting the Real Estate except: _____ and _____

Buyer's Initials Date/Time _____ Seller's Initials Date/Time _____

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111 that no improvements or services (site or area) have been installed or furnished, nor notification received from public authority or
 112 owner's association of future improvements of which any part of the costs may be assessed against the Real Estate, except:
 113 _____.

114 **8. HOMEOWNER ASSOCIATION/CONDOMINIUM DECLARATIONS, BYLAWS AND ARTICLES:** Real Estate (a)
 115 ☐ is ☐ is not subject to a homeowner association established by recorded declaration with mandatory membership,
 116 (b) ☐ is ☐ is not subject to a homeowner association assessment (separate from HOA fees) (c) ☐ is ☐ is not subject
 117 to mandatory fees imposed on the real estate [☐ pool, ☐ golf course, ☐ other _____] (separate from HOA
 118 fees). Seller further certifies that, to the best of Seller's knowledge, there are no Homeowner Association violations (current or
 119 outstanding) affecting the Real Estate except: _____.

120 If the Real Estate is subject to a Homeowner Association Declaration or is a Condominium, Seller will, at Seller's expense, provide
 121 Buyer with a current copy of documents affecting the real estate including, but not limited to, documents recorded with the county,
 122 the Association Declaration, the Association's financial statements, Rules and Restrictions, schedule of monthly, annual and
 123 special assessments/fees, architectural standards (to the extent not included in the Rules and Restrictions), the Bylaws and the
 124 Articles of Incorporation and other pertinent documents ("Documents") within _____ calendar days beginning the day
 125 following the Contract Acceptance Date. Buyer shall have the right to disapprove of the Documents by delivering written notice
 126 of Buyer's disapproval to Seller within _____ calendar days beginning the day following receipt of Documents
 127 ("Disapproval Date"). If written notice of disapproval is delivered by the Disapproval Date, then this Contract shall become null
 128 and void. Unless written notice is delivered by the Disapproval Date, Buyer shall be deemed to have approved the Documents and
 129 waives the right to terminate the Contract based upon the terms and conditions of same. If Seller fails to provide Documents as
 130 required, Buyer has the right to terminate the Contract. Seller agrees, as a condition to Closing, to secure, at Seller's expense,
 131 written approval for this sale if required by the Documents. Seller, at Seller's expense, shall provide any letter of assessment
 132 required at Closing by the lender and/or title company. Seller certifies that the current HOA fees are: \$_____.
 133 ☐ Monthly ☐ Quarterly ☐ Annually and/or ☐ Other _____.

134 **9. MAINTENANCE:** Until physical possession is delivered to the Buyer, Seller shall continue to maintain the Real Estate, as
 135 described in Section 5, including the grounds and improvements thereon. Seller shall repair or replace any appliances, equipment
 136 or systems currently in normal operating condition that fail prior to possession except: _____. Seller
 137 further agrees that until physical possession is delivered to the Buyer, the Real Estate will be in as good condition as it is presently,
 138 except for normal wear and casualty damage from perils insurable under a standard all risk policy. If, prior to Closing, the Real
 139 Estate is damaged or destroyed by fire or other casualty, Buyer shall have the option to (a) proceed with the Closing, or (b) terminate
 140 this Contract. While this Contract is pending, Seller shall not change any existing lease or enter into any new lease, nor make any
 141 substantial alterations or repairs without the written consent of the Buyer. **Buyer and Seller agree that Buyer shall be provided**
 142 **the opportunity to conduct a walk-through inspection of the Real Estate within 48 hours prior to Closing, solely for the**
 143 **purpose of ascertaining that the Seller has maintained the Real Estate as required herein and has met all other contractual**
 144 **obligations.** Upon Closing, Buyer shall become responsible for any risk of loss and for insurance for the Real Estate.

145 **10. HOME WARRANTY PROGRAM:** Buyer has been informed of the Coldwell Banker Home Protection Plan and its potential benefits.
 146 Buyer selects ☐ Coldwell Banker Home Protection Plan ☐ other Home Protection Plan _____ to be paid for by
 147 ☐ Buyer ☐ Seller at an amount not to exceed _____. ☐ Buyer does not select a Home Protection Plan.

148 **11. INSURANCE:** Buyer's right to terminate this Contract due to property and flood insurance availability and/or cost must be
 149 satisfied during the **Real Estate Inspection Contingency Period (as defined in Section 14 below)**. Buyer(s) acknowledges that
 150 it is Buyer's sole responsibility to make inquiries with regard to insurance, including, but not limited to, real, flood and personal
 151 property insurance availability and cost. **BUYER(S) IS RELYING ON BUYER'S OWN UNDERSTANDING OF**
 152 **INSURANCE TO BE OBTAINED.**

153 **12. PROPERTY DISCLOSURE FORM:** Buyer ☐ has ☐ has not received the Ohio Residential Property Disclosure form
 154 or ☐ Seller represents and warrants that Seller is exempt from providing the Ohio Residential Property Disclosure.

155 **13. BUYER'S OFF-SITE ACKNOWLEDGEMENT:** Buyer acknowledges that Buyer has conducted investigations with
 156 regard to the municipality, zoning, school district, and use of the Real Estate and conditions outside of the boundaries of
 157 the Real Estate, including but not limited to, crime statistics, registration of sex offenders, noise levels (i.e., airports,
 158 interstates, environmental), local regulations/development or any other issues of relevance to the Buyer and has verified
 159 that the Real Estate is suitable for Buyer's intended use. Buyer assumes sole responsibility for researching such conditions.
 160 Notwithstanding anything to the contrary, Seller makes no representations or warranties with regard to these conditions and the
 161 use of the Real Estate. Buyer acknowledges that Buyer has been given the opportunity to conduct research pertaining to any and
 162 all of the foregoing prior to execution of this Contract. Buyer is relying solely on Buyer's own research, assessment and inquiry
 163 with local agencies and is not relying, and has not relied, on Seller or any REALTOR® involved in this transaction.

164 **14. REAL ESTATE INSPECTION CONTINGENCY:** For purposes of this clause, time is of the essence. The Buyer has the
 165 option to have the Real Estate inspected, at Buyer's expense. Buyer shall have up to _____ calendar days
 166 ("Inspection Period") beginning the day following Contract Acceptance Date to conduct all inspections related to the Real Estate.
 167 Inspections regarding the physical material condition, insurability and cost of a casualty insurance policy, boundaries, and use of
 168 the Real Estate shall be the sole responsibility of the Buyer. **Buyer is relying solely upon Buyer's examination of the Real**

Buyer's Initials Date/Time _____ Seller's Initials Date/Time _____

Estate, the Seller's certification herein, and inspections herein requested by the Buyer or otherwise required, if any, for its physical condition and overall character, and not upon any representation by the REALTORS® involved. During the Inspection Period, Buyer and Buyer's inspectors and contractors shall be permitted access to the Real Estate at reasonable times and upon reasonable notice. Buyer shall be responsible for any damage to the real estate caused by Buyer or Buyer's inspectors or contractors, which repairs shall be completed in a timely and workmanlike manner at Buyer's expense.

a) If Buyer is not satisfied with the condition of the Real Estate as revealed by the inspection(s) and desires corrections to material defect(s), Buyer shall provide written notification of any material defect(s) and the portion(s) of the inspection report which describe the basis for the Buyer's dissatisfaction to the Listing Firm or Seller with a request for corrections desired within the Inspection Period. Buyer and Seller shall have _____ calendar days beginning the day following the date of delivery of the Post-Inspection Agreement or other written notice requesting corrections ("Settlement Period") to negotiate to reach a written agreement in settlement of the condition of the Real Estate. Delivery of the Post-Inspection Agreement or other written notice requesting corrections to material defects will designate the end of the Inspection Period, if provided prior to the end of the Inspection Period identified above.

If written settlement of the condition of the Real Estate is not reached within the Settlement Period, Buyer shall have the option to withdraw the written request for corrections within the Settlement Period and accept the Real Estate in "as is" condition. If written settlement is not reached, with signed copies of settlement agreement physically delivered to the parties or their respective agents within the Settlement Period, and Buyer has not withdrawn the request for corrections in writing, this Contract shall be terminated. Buyer shall have the right to terminate the Contract, prior to reaching written agreement with signed copies physically delivered to the parties or their respective agents, during the Settlement Period. Buyer agrees that minor repairs and routine maintenance items are not to be considered material defects with regard to this contingency.

OR

b) If Buyer is not satisfied with the condition of the Real Estate, as revealed by the inspection(s) and desires to terminate this Contract, Buyer shall provide written notification to Listing Firm or Seller that Buyer is exercising Buyer's right to terminate this Contract within the Inspection Period, and this Contract shall be terminated.

If Buyer is satisfied with the results of the inspection(s), Buyer shall deliver written notification to Listing Firm or Seller within the Inspection Period stating Buyer's satisfaction and waiver of the contingency. **IF BUYER DOES NOT DELIVER SUCH NOTIFICATION OF SATISFACTION AND WAIVER OF THIS CONTINGENCY OR WRITTEN NOTIFICATION AS IDENTIFIED IN (a) OR (b) ABOVE, WITHIN THE INSPECTION PERIOD, THEN BUYER SHALL BE DEEMED TO BE SATISFIED WITH ALL INSPECTIONS AND THE CONTINGENCY SHALL BE CONSIDERED WAIVED. IF BUYER DOES NOT COMPLETE REAL ESTATE INSPECTION(S) DURING THE INSPECTION PERIOD, BUYER'S RIGHT TO INSPECT SHALL BE DEEMED WAIVED.**

A. ☐ **BUYER ELECTS TO CONDUCT INSPECTION(S) OF THE REAL ESTATE** to determine the material physical condition of the house, land, improvements, fixtures, equipment, any additional structures, and any hazardous conditions on the Real Estate. *(The inspection(s) may include, but are not limited to, the following inspections which may or may not be performed by the same or different inspectors on the same or different dates.)*

Air Conditioning	Heating	Roofing	Water Quality / Quantity	Structural	Well / Septic System
Plumbing	Fireplace	Mold	Electrical	Asbestos	Radon
				Infestations	Any other desired by Buyer

B. ☐ **BUYER WAIVES THE REAL ESTATE INSPECTIONS** in A above with the following exception(s):

Buyer acknowledges that Buyer has been advised by REALTOR® to conduct inspections of the Real Estate and has been provided the opportunity to make this Contract contingent upon the results of such inspections. Buyers Initials

C. ☐ **BUYER SELECTS A TERMITE AND WOOD-BORING INSECT INSPECTION** (required by some lenders/types of financing).

☐ **BUYER WAIVES A TERMITE AND WOOD-BORING INSECT INSPECTION.**

D. **LEAD-BASED PAINT INSPECTION:** Buyer ☐ has ☐ has not received the Seller's disclosure of any lead-based paint or lead-based paint hazards known to Seller on the Real Estate. Buyer ☐ has ☐ has not received the pamphlet "Protect Your Family From Lead in Your Home".

☐ **BUYER SELECTS THE LEAD-BASED PAINT INSPECTION** pursuant to the attached Lead-Based Paint Inspection Addendum, which provides rights and responsibilities that supersede those of the general inspection contingency of this Contract.

☐ **BUYER WAIVES THE LEAD-BASED PAINT INSPECTION.**

☐ **NOT APPLICABLE.**

SELLER(S) AND REALTORS® SHALL NOT BE RESPONSIBLE FOR ANY UNKNOWN AND/OR DISCLOSED DEFECTS IN THE REAL ESTATE. BUYER ACKNOWLEDGES THAT BUYER HAS BEEN ADVISED BY REALTOR® TO CONDUCT INSPECTIONS OF THE REAL ESTATE THAT ARE OF CONCERN TO BUYER AND HAS BEEN PROVIDED THE OPPORTUNITY TO MAKE THIS CONTRACT CONTINGENT UPON THE RESULTS OF SUCH INSPECTION(S).

Buyer's Initials Date/Time _____ Seller's Initials Date/Time _____

226 **15. PROPERTY SURVEY:** Buyer(s) acknowledges that surveys obtained by the lender are not for the benefit of the Buyer.
 227 If Buyer elects to have the property surveyed for his benefit, it shall be at Buyer's expense.

228 **16. OTHER CONTINGENCIES/AGREEMENTS:** ☐ See attached Addenda which are signed by all parties and incorporated
 229 into this Contract: _____

230
 231
 232
 233
 234
 235 **17. TITLE INSURANCE:** Title insurance is designed to protect the policyholder of such title insurance for covered losses caused
 236 by defects in title (ownership) to the Real Estate that are in existence on the date and time the policy of title insurance is issued.
 237 Title insurance is different from casualty or liability insurance. **Buyer is encouraged to inquire about the benefits of owner's**
 238 **title insurance from a title insurance agency or provider. An Owner's Policy of Title Insurance, while not required, is**
 239 **recommended. A Lender's Policy of Title Insurance, if required by the mortgage lender, does not provide protection to**
 240 **the Buyer. Buyer acknowledges that it is Buyer's sole responsibility to make inquiries with regard to owner's title insurance**
 241 **prior to Closing.**

242 ☐ Buyer selects an Owner's Policy of Title Insurance.

243 ☐ Buyer selects an Owner's Policy of Title Insurance at Buyer's expense.

244 ☐ **Seller shall pay an amount not to exceed \$300 towards the purchase of an Owner's Policy of Title Insurance and**
 245 **Buyer shall be responsible for payment of the balance of the Owner's Policy of Title Insurance premium.**

246 ☐ **Seller shall pay the entire cost of an Owner's Policy of Title Insurance premium.**

247 Seller's contribution is payable only if Buyer has selected to obtain the Owner's Policy of Title Insurance at Closing, so
 248 that Seller's contribution may be deducted from the proceeds paid to Seller at Closing. This amount shall be in addition to
 249 Seller-paid settlement charges stated in Section 3, if any.

250 **18. TAXES AND ASSESSMENTS:** At Closing, Seller shall pay or credit on the purchase price (a) all real estate taxes and
 251 assessments, including penalties and interest, which became due and payable prior to the Closing, (b) a pro rata share, calculated
 252 as of the closing date in the manner set forth below, of the taxes and assessments becoming due and payable after the closing, and
 253 (c) the amount of any agricultural tax savings accrued as of the Closing date which would be subject to recoupment if the Real
 254 Estate were converted to a non-agricultural use (whether or not such conversion actually occurs), unless Buyer has indicated that
 255 Buyer is acquiring the Real Estate for agricultural purposes. ☐ If checked, Buyer hereby states that Buyer will use Real Estate
 256 for agricultural purposes and expressly waives Seller's payment to Buyer of the estimated agricultural tax savings subject to CAUV
 257 recoupment.

258 **TAX PRORATIONS:** All prorations shall be based upon the most recent available tax rates, assessments and valuations. It is the
 259 intent of the Seller and Buyer that each shall pay the real estate expenses as follows:

260 Seller's share is based upon the taxes and assessments which are a lien for the year of the Closing. Long Proration Method - Seller pays
 261 entire taxes due which cover the tax period(s) up to the date of Closing. If new construction, Long Proration method shall apply.

262 ☐ Short Proration Method: ONLY CHECK THIS BOX IF THE SHORT PRORATION METHOD IS TO BE USED - Seller's
 263 share shall be calculated as of the date of Closing, based upon the amount of the annual taxes (as determined by the most
 264 recently assessed tax amounts) to establish a daily rate of taxes and then multiplying the daily rate by the number of days from
 265 the first day of the current, semi-annual tax period to the date of Closing. If checked, the Short Proration Method shall be
 266 applicable and shall supersede the provision to use the Long Proration Method.

267 **ASSESSMENTS:** Any special assessments are payable in a single annual installment and shall be prorated on the long proration method.
 268 Seller and Buyer acknowledge that actual bills received by Buyer after Closing for real estate taxes and assessments may differ
 269 from the amounts prorated at Closing; however, all Closing prorations shall be final, except for the following (if applicable): (i.e.,
 270 tax abated property, new construction, etc.) _____ Buyer
 271 shall assume responsibility for above items upon Closing. The Real Estate may contain a newly-constructed residence which at
 272 the time of Closing does not yet appear on the most recent official tax duplicate available, so that the tax bill prorated at the Closing
 273 shows taxes for only the vacant or partially improved land. Seller agrees that Seller is responsible for the amount of all real estate
 274 taxes assessed for the land and the residence through the date of Closing, regardless of when assessed, and if one or more tax bills
 275 are issued after the Closing which show taxes which were not prorated by Seller and Buyer at the Closing, Seller shall immediately
 276 pay the additional appropriate prorated amount to Buyer upon delivery by Buyer of the new tax bill(s). This provision shall survive
 277 the Closing and delivery of the deed, and the REALTOR® shall not be responsible for enforcement of this provision. Buyer shall
 278 be solely responsible for inquiring about and determining any tax credits or abatements available to the Real Estate.

279 **19. OTHER PRORATIONS:** It is the intent of the Seller and Buyer that each shall pay the real estate expenses listed in (a) and
 280 (b) below due for the period of time that each owns the Real Estate. There shall be prorated between Seller and Buyer as of
 281 Closing: (a) homeowner/condominium association assessments and other charges imposed by the association under the terms of
 282 the Association/Condominium Documents, if applicable, as shown on the most recent official Association statement available as

Buyer's Initials Date/Time _____ Seller's Initials Date/Time _____

of the date of Closing, and/or, (b) rents and operating expenses if the Real Estate is rented to tenants. Security and/or damage deposits held by Seller shall be transferred to Buyer at Closing without proration. Seller and Buyer acknowledge that prorations are based on the information provided at closing and that actual amounts charged and/or collected for prorated items may differ; however all Closing prorations shall be final.

20. CONVEYANCE AND CLOSING: Closing services will be provided by title company designated by Buyer: Residential Title LLC (name of title company, if known).

Both Buyer and Seller agree to execute all documents required by the closing/escrow agent. At Closing, Seller shall be responsible for transfer taxes, Condominium or HOA transfer fees, conveyance fees, deed preparation, settlement fees chargeable to Seller, the cost of removing or discharging any defect, lien or encumbrance required for conveyance of the Real Estate as required by this Contract; and shall convey marketable title (as determined with reference to the Ohio State Bar Association Standards of Title Examination) to the Real Estate by recordable and transferable deed of general warranty or fiduciary deed, if applicable, in fee simple absolute, with release of dower. Date of Closing will be _____, or earlier as mutually agreed by the parties. Title shall be free, clear and unencumbered as of Closing, with the exception of the following, if applicable: (1) covenants, conditions, restrictions and easements of record, (2) legal highways, (3) any mortgage expressly assumed by Buyer and agreed to by Seller's current lender in writing, (4) all installments of taxes and assessments becoming due and payable after Closing, (5) zoning and other laws, (6) homeowner/condominium association fees becoming due and payable after Closing, and (7) the following assessments (certified or otherwise): _____. Seller shall have the right at Closing to pay out of the Purchase Price any and all encumbrances or liens. Make deed to: _____.

21. POSSESSION AND OCCUPANCY: For purposes of this clause, time is of the essence. Subject to rights of tenants, possession/occupancy shall be given ☐ at Closing ☐ on or before _____ o'clock ☐ (A.M.) ☐ (P.M.) ☐ (Noon) EASTERN/DAYLIGHT STANDARD TIME on _____, or such earlier date that the Seller so notifies the Buyer. Until such time, Seller shall have the right of possession/occupancy free of rent, unless otherwise specified, but shall pay for all utilities used. Seller shall order final meter readings to be made as of the occupancy date for all utilities serving the Real Estate and Seller shall pay for all final bills rendered from such meter readings. Seller acknowledges and agrees that prior to Buyer taking possession of the Real Estate, Seller shall remove all personal possessions not included in this Contract and shall remove all debris. **If Seller fails to vacate as agreed in this Contract or any attached post-closing occupancy agreement, Seller shall be responsible for all additional expenses, including attorney's fees, incurred by Buyer to take possession as a result of Seller's failure to vacate.**

22. AGENCY DISCLOSURES: Buyer and Seller acknowledge having reviewed the attached state-mandated agency disclosure statement(s).

23. COMPANY SPECIFIC PROVISIONS: _____

24. M.L.S. AND PUBLIC RECORD ACKNOWLEDGEMENT: Seller and Buyer acknowledge that REALTOR® shall disclose this sales information to any Multiple Listing Service to which REALTOR® is a member and that disclosure by M.L.S. to other M.L.S. participants, affiliates, governmental agencies or other sources authorized to receive M.L.S. information shall be made. Seller and Buyer acknowledge that sales information is public record and may be accessed and used by entities, both public and private, without the consent of the parties. Seller and Buyer authorize REALTOR® to disclose financing settlement charges paid by seller and other concession data upon inquiry and to the M.L.S. sold database, as applicable, to the extent necessary to adjust price to accurately reflect market value.

25. SOLE CONTRACT: The parties agree that this Contract constitutes their entire agreement and no oral or implied agreement exists. **Any acceptance of, amendments and/or extensions to this Contract shall be in writing, signed by all parties and copies shall be included with all copies of the original Contract.** This Contract shall be binding upon the parties, their heirs, administrators, executors, successors and assigns. Faxes and Internet transmissions are an acceptable method of communication for physical delivery of the Contract in this transaction and shall be binding upon the parties.

26. ELECTRONIC SIGNATURES: Manual or electronic signatures on contract documents, transmitted in original, facsimile or electronic format shall be valid for purposes of this Contract and any amendments, addendums or notices to be delivered in connection with this Contract.

27. INDEMNITY: Seller and Buyer recognize that the REALTORS® involved in the sale are relying on all information provided herein or supplied by Seller or Seller's sources and Buyer and Buyer's sources in connection with the Real Estate, and agree to indemnify and hold harmless the REALTORS®, their agents and employees from any claims, demands, damages, lawsuits, liabilities, costs and expenses (including reasonable attorney's fees) arising out of any referrals, misrepresentation or concealment of facts by Seller or Seller's sources and/or Buyer and Buyer's sources.

28. ELECTRONIC/WIRE FRAUD: Email is **not** always secure or confidential. Never respond to a request that you send funds or nonpublic personal information, such as credit card or debit card numbers or bank account and/or routing numbers, by email. If you receive an email message concerning a transaction and the email requests that you send funds or provide nonpublic personal information, **do not respond** to the email and immediately contact the known individual/entity with whom you have an established relationship using a separate verified method of communication to determine/notify of suspected email fraud.

Buyer's Initials Date/Time _____ Seller's Initials Date/Time _____

341 **29. ACKNOWLEDGMENT:** Buyer and Seller acknowledge that any questions regarding legal liability with regard to any provision
 342 in this Contract, accompanying disclosure forms and addendums or with regard to Buyer's/Seller's obligations as set forth in this Contract
 343 must be directed to Buyer's/Seller's attorney. In the event the Broker provides to Buyer or Seller names of companies or sources for
 344 such advice and assistance, the parties additionally acknowledge and agree that the Broker does not warrant, guarantee, or endorse the
 345 services and/or products of such companies or sources.

346 **30. CONTRACT ACCEPTANCE DATE:** As used herein, the Contract Acceptance Date shall be defined as the date on
 347 which all provisions of the Contract have been accepted and agreed by all parties to the Contract, and the document reflecting the
 348 final signatures of acceptance has been physically delivered to the other party ("Contract Acceptance Date").

349 **31. EXPIRATION AND APPROVAL:** This offer is void if not accepted in writing on this Contract form, with this form
 350 physically delivered to Buyer or Buyer's agent on or before _____ o'clock ☐ (A.M.) ☐ (P.M.)
 351 ☐ (Noon) EASTERN/DAYLIGHT STANDARD TIME _____. The Buyer has read, fully
 352 understands and approves the foregoing offer and acknowledges receipt of a signed copy. Buyer certifies that the signatory(ies)
 353 below has/have full authority to enter into this agreement and that no additional signatories, spouse or otherwise, are necessary in
 354 order to purchase the property.

Print Buyer's Name _____

Buyer's Signature _____

Date/Time _____

Print Buyer's Name _____

Buyer's Signature _____

Date/Time _____

Buyer's Address _____

355 **32. ACTION BY SELLER:** The undersigned Seller has read and fully understands the foregoing offer. Seller certifies that the
 356 signatory(ies) below has/have full authority to enter into this Contract and that no additional signatories, spouse or otherwise, are
 357 necessary in order to convey the Real Estate. Seller hereby: ☐ accepts said offer and agrees to convey the Real Estate according
 358 to the above terms and conditions, ☐ rejects said offer, or ☐ counteroffers according to the above modifications initialed and
 359 dated by Seller, which counteroffer shall become null and void if not accepted in writing on this Contract form, with this form
 360 physically delivered to Seller or Seller's agent on or before _____ o'clock ☐ (A.M.) ☐ (P.M.) ☐ (Noon)
 361 EASTERN/DAYLIGHT STANDARD TIME _____.

Print Seller's Name _____

Seller's Signature _____

Date/Time _____

Print Seller's Name _____

Seller's Signature _____

Date/Time _____

Seller's Address _____

[ALL OWNERS AND SPOUSES OF OWNERS MUST SIGN.]

COMPLETE THE SECTIONS BELOW FOR ADMINISTRATIVE PROCESSING

CONTRACT ACCEPTANCE DATE: Contract terms dictate that physical delivery of final signature(s) on this contract form to the other party constitutes contract acceptance. Delivery of final contract to other party is to be made on the date of final signature(s).

DATE OF FINAL SIGNATURE ON _____ .
 (Date/Time)

RECEIPT OF EARNEST MONEY DEPOSIT: Failure to provide written verification as provided in Section 2 of the Contract to Purchase may result in Seller's termination of the Contract.

I hereby certify receipt of Earnest Money (☐ check/money order # _____, ☐ wire/electronic transfer # _____, ☐ cash, ☐ other _____) in the amount of \$ _____.

further certify that the funds shall be submitted for deposit in accordance with Ohio law and acknowledge that failure to deposit in a timely manner is a violation of license law.

Print REALTOR'S Name/Firm _____

REALTOR's Signature _____

Date/Time _____

THIS INFORMATION IS REQUIRED FOR TITLE, LENDER AND ADMINISTRATIVE PROCESSING

The signatories below grant permission to the settlement agent to provide to their respective Real Estate Broker or their authorized Sales Associates, copies of the Closing Disclosure and the Settlement Statement for review prior to Closing.

<div></div>	<div></div>
Seller's Signature	Date/Time
<div></div>	<div></div>
Seller's Signature	Date/Time
<div></div>	<div></div>
Buyer's Signature	Date/Time
<div></div>	<div></div>
Buyer's Signature	Date/Time

SELLING/BUYER'S REALTOR® Firm: _____

Address _____

Broker State License Number 2008002470 Broker Firm MLS ID SHEL88

Contact (Agent) Name _____

Contact (Agent) State License Number _____ Agent MLS Number _____

Contact (Agent) Email and Phone _____

(Principal) Broker Name Marysue B Price

LISTING/SELLER'S REALTOR® Firm: _____

Address _____

Broker State License Number _____ Broker Firm MLS ID _____

Contact (Agent) Name _____

Contact (Agent) State License Number _____ Agent MLS Number _____

Contact (Agent) Email and Phone _____

(Principal) Broker Name _____



PURCHASE AGREEMENT
OFFER, RECEIPT AND ACCEPTANCE



- 1 **BUYER:** _____ offers to buy the
- 2 **PROPERTY:** located at _____,
- 3 City _____, Ohio, Zip _____ Permanent Parcel No(s). _____
- 4 The property, which BUYER has examined and accepts in its "AS IS" PRESENT PHYSICAL CONDITION except for
- 5 normal wear and tear, shall include the land, all appurtenant rights, privileges and easements, and all buildings and
- 6 fixtures, including such of the following as are now on the property: all landscaping, electrical, heating, plumbing and
- 7 bathroom fixtures, ceiling fans; central air conditioning systems; all window and door shades, blinds, awnings, screens,
- 8 storm windows, curtain rods and drapery hardware; garbage disposal, TV antenna, rotor and control unit; radiator covers,
- 9 smoke detectors, garage door opener(s) and _____ controls; all attached wall-to-wall carpeting. The following selected
- 10 items shall also remain: ☐ satellite dish; ☐ countertop range; ☐ range; ☐ wall oven;
- 11 ☐ microwave; ☐ kitchen refrigerator; ☐ second refrigerator; ☐ dishwasher; ☐ washer; ☐ dryer; ☐ window air
- 12 conditioner(s); ☐ through the wall air conditioners; ☐ gas grill; ☐ fireplace tools; ☐ screen, ☐ glass doors and
- 13 ☐ grate; ☐ all existing window treatments; ☐ ceiling fan(s); ☐ wood burner stove inserts; ☐ gas logs; and
- 14 ☐ water softener (do not check if leased); ☐ humidifier; ☐ dehumidifier; ☐ security system; ☐ freezer;
- 15 ☐ indoor grill; ☐ mailbox and ☐ invisible fence, transmitter, _____ collar(s).
- 16 Additional Items to be included: _____
- 17 _____
- 18 Items Excluded: _____
- 19 _____
- 20 **SECONDARY OFFER:** This ☐ is ☐ is not a secondary offer. This secondary offer, if applicable, shall become a
- 21 primary contract upon BUYER'S receipt of a signed copy of the release of the primary contract on or before
- 22 _____ (Date). BUYER shall have the right to terminate this secondary offer at any time prior
- 23 to BUYER'S receipt of said copy of the release of the primary contract by delivering written notice to the
- 24 SELLER or the SELLER'S agent. Upon receipt of the release of the primary contract, BUYER shall deposit earnest money
- 25 within four (4) days and BUYER and SELLER agree to sign an addendum listing the date for loan application, loan
- 26 approval, deposit of funds and documents, title transfer and possession.
- 27 **PRICE:** BUYER shall pay the sum of _____ \$ _____
- 28 Payable as follows:
- 29 **Earnest money** in the form of a check, paid to/deposited with (check one)
- 30 ☐ Listing Broker ☐ Buyers' Broker or ☐ _____
- 31 and credited against the purchase price _____ \$ _____
- 32 The check shall be deposited immediately upon acceptance
- 33 of a binding Agreement as defined below on lines 263-272
- 34 **Additional Funds** to be deposited in escrow _____ \$ _____
- 35 BUYER ☐ will ☐ will not (check one) meet down payment requirement
- 36 in cash, without regard to the sale and/or closing of any other real property
- 37 **Mortgage** loan to be obtained by BUYER _____ \$ _____
- 38 ☐ CONVENTIONAL, ☐ FHA, ☐ VA ☐ OTHER _____
- 39 _____
- 40 **FINANCING:** This transaction is conditioned upon BUYER obtaining a commitment for a first mortgage loan (the "Loan") from
- 41 Howard Hanna Mortgage Services or such other lending institution chosen by BUYER in the amount set forth above, or in
- 42 a lesser amount acceptable to BUYER. BUYER agrees to apply in writing for the Loan and order the appraisal within
- 43 _____ days after the date of acceptance, to cooperate fully with the lender's requests for information and to use good faith efforts
- 44 to obtain the Loan and shall obtain a commitment for the Loan on or before _____. If, despite
- 45 BUYER'S good faith efforts, a loan commitment has not been obtained, then this Agreement shall be null and void. Upon signing
- 46 of a mutual release by SELLER and BUYER, the earnest money deposit shall be returned to the BUYER without any further
- 47 liability of either party to the other or to the Brokers and their agents. If this is a secondary offer, BUYER shall not be

Property Address: _____

48 obligated to make a loan application until after BUYER'S offer becomes the primary contract.

49 **CLOSING:** All documents and funds necessary to complete this transaction shall be placed in escrow with BUYER'S
50 lending institution or a title company on or before _____, and the deed shall be recorded on or
51 about _____, except that if a defect in title appears, SELLER shall have thirty (30) days
52 after notice from BUYER to remove such defect and, if unable to do so, BUYER may either (1) accept title subject to such
53 defect without any reduction in the purchase price or (2) terminate this Agreement, in which case neither BUYER,
54 SELLER nor any REALTOR(S)® shall have any further liability to each other, and both BUYER and SELLER agree to sign
55 a mutual release, whereupon the earnest money shall be returned to BUYER.

56 **POSSESSION:** SELLER shall deliver possession and occupancy to BUYER on or before _____(time) ☐ a.m. ☐ p.m.
57 _____day(s) after recording of the deed or _____, whichever is later. Subject to BUYER'S rights, if any, the
58 premises may be occupied by the SELLER free for _____(____) days and an additional _____
59 (____) days at a rate of \$ _____per day provided, however, that under no circumstances shall SELLER occupy
60 Premises beyond _____(date). Payment and collection of fees for use and occupancy after transfer of title
61 are the sole responsibility of SELLER and BUYER and not of the real estate agents or broker involved in the sale.

62 **TITLE:** SELLER shall convey a marketable title to BUYER by general warranty deed and/or fiduciary deed, if
63 required, with dower rights released, free and clear of all liens and encumbrances whatsoever, except a) any
64 mortgage assumed by BUYER, b) such restrictions, conditions, easements (however created), including without
65 limitation subsurface rights, and encroachments, which do not materially adversely affect the use or value of the
66 property, c) zoning ordinances, if any, and d) taxes and assessments, both general and special, not yet due and
67 payable. BUYER is encouraged to obtain an Owner's Title Insurance Policy ("OTIP"). An OTIP is different from a
68 lender's title insurance policy, which will not protect the BUYER from claims and challenges on the title. Seller
69 shall furnish an OTIP from Barristers of Ohio or _____
70 as agreed to by the parties, in an amount of the purchase price.

71 **LIMITED HOME WARRANTY:** Home Warranties DO NOT COVER PRE-EXISTING DEFECTS in the property nor does
72 the existence of a warranty preclude the advisability of professional inspection(s). BUYER ☐ does elect ☐ does not elect
73 (MARK THE APPROPRIATE BOX) to secure a Home Warranty Plan issued by Home Security of America, Inc. The cost of
74 \$ _____shall be paid by ☐ SELLER ☐ BUYER through escrow.

75 **PRORATIONS:** General taxes, annual maintenance fees, subdivision charges, special assessments, city and county
76 charges and tenant's rents shall be prorated as of the date of the title transfer. Taxes and assessments shall be prorated
77 based upon the latest available tax duplicate. However, if the tax duplicate is not yet available or the improved land is
78 currently valued as land only, taxes and assessments shall be prorated based upon 35% of the selling price times the
79 millage rate. The escrow agent is instructed to contact the local governmental taxing authority, verify the correct tax value
80 of the property as of the date of title transfer and pay the current taxes due to the date of the title transfer. If the property
81 being transferred is new construction and recently completed or in the process of completion at the time the AGREEMENT
82 was signed by the parties, the escrow agent is instructed to make a good faith estimate of the taxes to be owed on the
83 value of the improved property to the date of title transfer and reserve sufficient funds in escrow from SELLER'S net
84 proceeds to pay those taxes when they become due and payable after title transfer. The escrow agent is instructed to
85 release the balance, if any, of the funds on reserve, once it receives notice from the local county auditor that the taxes on
86 the land and improvements have been paid in full to the date of title transfer. BUYER acknowledges that the latest
87 available tax duplicate may not accurately reflect the amount of taxes and assessments that will be owed. SELLER agrees
88 to reimburse BUYER directly outside of escrow for any increase in valuation and the cost of all passed or levied, but not yet
89 certified, taxes and assessments, if any, prorated to the date of title transfer. SELLER is not aware of any proposed taxes
90 or assessments, public or private, except the following: _____.

91 In the event the property shall be deemed subject to any agricultural tax recoupment (C.A.U.V.), then
92 ☐ BUYER ☐ SELLER agrees to pay the amount of such recoupment.

93 **CHARGES/ESCROW INSTRUCTIONS:** This AGREEMENT shall be used as escrow instructions subject to the
94 Escrow Agent's usual conditions of acceptance. If there is any conflict between the escrow agent's usual conditions of
95 acceptance and this Agreement, the terms of this Agreement shall prevail.

96 **SELLER shall pay** the following costs through escrow: a) any governmental conveyance fee or transfer tax; b) any
97 amount required to discharge any mortgage, lien or encumbrance not assumed by BUYER and to record the cancellation
98 thereof; c) title exam and one half the cost of insuring premium for Owners Fee Policy of Title Insurance; d) deed prepara
99 tion costs; e) prorations due BUYER; f) real estate brokerage commissions as described in lines 302-304 below; and g)
100 one-half of the escrow fee (unless VA/FHA regulations prohibit payment of escrow fees by BUYER, in which case
101 SELLER shall pay the entire escrow fee). SELLER shall pay directly all utility charges to the date of title transfer or
102 date of possession, whichever is later. The escrow agent shall withhold \$ _____from the proceeds due SELLER
103 for the SELLER'S final water and sewer bills. Tenant security deposits, if any, shall be credited in escrow to the BUYER.

Property Address: _____

BUYER shall pay the following through escrow: a) one-half of the escrow fee (unless prohibited by VA/FHA regulations); b) one-half the cost of insuring premiums for Owners Fee Policy of Title Insurance; c) all recording fees for the deed and any mortgage, and d) BUYER'S share of Howard Hanna's real estate commission for buyer broker services rendered to BUYER. Howard Hanna's real estate commission for all general brokerage services that Howard Hanna will provide to BUYER consists of two components: (i) a flat charge of \$[265], paid by BUYER; AND (ii) the commission listed below on lines 302-304, which percentage component is being offered and will be paid by SELLER to Howard Hanna as the cooperating broker that successfully produced the BUYER. BUYER shall secure new insurance on the property. The cost of the home warranty plan, if any, shall be charged as shown in line [74] above.

☐ The SELLER hereby authorizes and instructs the escrow agent to send a copy of the fully signed ALTA Settlement Statement to the SELLER'S Broker listed on this Agreement promptly after closing.

☐ The BUYER hereby authorizes and instructs the escrow agent to send a copy of the fully signed ALTA Settlement Statement to BUYER'S Broker listed on this Agreement promptly after closing.

INSPECTIONS: BUYER shall have professional inspectors perform, at BUYER'S expense, the inspection(s) indicated below. A professional is a person engaged full-time for profit in the business directly related to the inspection service indicated. BUYER must indicate "yes" for each professional inspection desired and the number of days following the date of Acceptance that BUYER has to conduct each inspection elected. BUYER assumes sole responsibility to select and retain a professional inspector for each requested inspection and releases Broker of any and all liability regarding the selection or retention of the inspector(s). If BUYER does not elect inspections, BUYER acknowledges that BUYER is acting against the advice of BUYER'S agent and broker. BUYER understands that all real property and improvements may contain defects and conditions that are not readily apparent and which may affect a property's use or value. BUYER and SELLER agree that the Broker(s) and their agents do not guarantee and in no way assume responsibility for the property's condition. BUYER acknowledges that it is BUYER'S own duty to exercise reasonable care to inspect and make diligent inquiry of the SELLER or BUYER'S inspectors regarding the condition and systems of the property.

INSPECTIONS REQUIRED BY ANY STATE, COUNTY, LOCAL GOVERNMENT OR FHAVA DO NOT NECESSARILY ELIMINATE THE NEED FOR THE INSPECTIONS LISTED BELOW.

WAIVER: _____ (initials) BUYER elects to waive each professional inspection to which BUYER has not indicated "YES." Any failure by BUYER to perform, within the time specified, any inspection indicated "YES" herein is a waiver of such inspection and shall be deemed absolute acceptance of the property by BUYER in its "AS IS" condition.

<u>Choice</u>		<u>Inspection</u>	<u>Expense</u>	
Yes	No		BUYER'S	SELLER'S
<input type="checkbox"/>	<input type="checkbox"/>	GENERAL HOME _____ days from acceptance of AGREEMENT	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	SEPTIC SYSTEM _____ days from acceptance of AGREEMENT	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	WATER POTABILITY _____ days from acceptance of AGREEMENT	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	WELL FLOW RATE _____ days from acceptance of AGREEMENT	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	RADON days from acceptance of AGREEMENT	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	MOLD* days from acceptance of AGREEMENT	<input type="checkbox"/>	<input type="checkbox"/>

*Buyer is advised to hire a professional inspector who is qualified to determine whether mold is present in the property, what type of mold is present and to propose an appropriate treatment of any mold that is discovered. Both prior and current water leaks and water damage to a property can result in the existence of mold which may cause adverse health effects.

☐ ☐ OTHER _____ days from acceptance of AGREEMENT ☐ ☐

Within three (3) days after completion of the last inspection, BUYER shall elect one of the following:

(A) Remove the inspection contingency and accept the property in its "AS IS" present physical condition. If the property is accepted in its "AS IS" present physical condition, then BUYER agrees to sign an *Amendment/Removal of Contingency*;

(B) Accept the property subject to SELLER agreeing to have specific material defects, that were either previously disclosed in writing by the SELLER or identified in a written inspection report, repaired by a qualified contractor in a professional manner at SELLER'S expense; BUYER agrees to provide SELLER with a copy of all inspection reports and to sign an Amendment to Purchase Agreement removing the inspection contingency and identifying those specific material defects which are to be repaired. SELLER and BUYER shall have three (3) days from SELLER'S receipt of BUYER'S written request and

Property Address: _____
copies of inspection reports to agree in writing which material defect(s), if any, shall be corrected by SELLER at SELLERS' expense. If BUYER and SELLER do not agree in writing within those three (3) days, then this AGREEMENT shall be null and void, and SELLER and BUYER agree to sign a mutual release, whereupon the earnest money shall be returned to BUYER. SELLER agrees to provide reasonable access to the property for BUYER to review any such material defects corrected by SELLER. For purposes of this AGREEMENT, "material defects" DO NOT include minor routine maintenance. **OR**

(C) Terminate this Agreement if BUYER'S written inspection report(s) or any other source(s) identify material defects NOT previously disclosed in writing by SELLER. If BUYER elects to terminate, BUYER agrees to provide a copy of the written inspection report(s) to SELLER, and both parties agree to promptly sign a mutual release, whereupon the earnest money shall be returned to BUYER.

Yes No

☐ ☐ **PEST/WOOD DESTROYING INSECTS:** An inspection of all structures on the property shall be made within _____ days by a licensed inspection or exterminating agency of ☐ BUYER'S or ☐ SELLER'S choice at ☐ BUYER'S ☐ SELLER'S expense and such agency's written report made available to the BUYER before closing. If such report shows existing infestation or damage by pests, termites or other wood destroying insects, treatment of the condition shall be made by a licensed exterminating agency which shall furnish a certificate of guarantee for a period of at least one year in the case of termites and a certificate of guarantee for a period of at least 60 days in the case of wood destroying insects. ALL REPAIRS AND TREATMENT COSTS SHALL BE PAID BY THE ☐ BUYER OR ☐ SELLER (unless FHA/VA regulations prohibit payment of inspection and/or repair expenses by BUYER, in which case SELLER shall pay such costs and/or repair expense). This agreement may be voided by either party, if the repair exceeds \$500.00. In that event, SELLER and BUYER agree to sign a mutual release whereupon the earnest money shall be returned to the BUYER.

Yes No

☐ ☐ **LEAD-BASED PAINT:** BUYER shall have the right to have a risk assessment or inspection of the property by a professional inspector, for the presence of lead-based paint and/or lead-based paint hazards at BUYER'S expense within _____ days after acceptance. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead In Your Home" for more information.) In the event existing deficiencies or corrections are identified by the inspector in their written report, BUYER shall have the right to terminate the AGREEMENT or request that the SELLER repair the specific existing deficiencies noted on the written inspection report. In that event, BUYER agrees to immediately provide SELLER with a copy of the written inspection and/or risk assessment report. Upon receipt of the inspection report and BUYER'S request for repairs, SELLER shall have the option to either agree to correct the deficiencies identified in the inspector's written report or decline to do any repairs. If SELLER elects to correct the deficiencies, SELLER agrees to provide to BUYER prior to Title Transfer a certificate from a qualified risk assessor or inspector demonstrating that the deficiencies have been remedied. If the SELLER declines to correct the deficiencies, BUYER may elect to terminate the AGREEMENT or accept the property in its "AS IS" condition. BUYER may remove this right of inspection at any time without SELLER'S consent.

BUYER ☐ HAS _____ (BUYER'S initials) ☐ HAS NOT _____ (BUYER'S initials) received a copy of the EPA pamphlet entitled "PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME" and a copy of the "DISCLOSURE ON LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS."

If BUYER has not received such pamphlet and disclosure, then this offer is subject to the SELLER completing the disclosure form and BUYER'S review and approval of the information contained on the disclosure form within _____ days from receipt.

The BUYER and SELLER can mutually agree IN WRITING to extend the dates for inspections, repairs, or to exercise their right to terminate the Agreement. SELLER agrees to provide reasonable access to the property for BUYER to review and approve any conditions corrected by SELLER. If this is a secondary offer, the number of days specified for each of the inspections indicated in lines 132-142 shall be from the date this becomes the primary contract and not from the date of acceptance.

MEGAN'S LAW: SELLER represents that SELLER has disclosed to BUYER all notices received pursuant to Ohio's sex offender law. The BUYER acknowledges that the information disclosed may no longer be accurate and assumes the responsibility to check with the local sheriff's office for current, complete and accurate information. BUYER will rely on BUYER'S own inquiry with the local sheriff's office as to registered sex offenders in the area and will not rely on SELLER or any real estate agent involved in the transaction to determine if a sex offender resides in the area of the property.

CONDITION OF PROPERTY: BUYER has examined the property and agrees that the property is being purchased in its "AS IS" PRESENT PHYSICAL CONDITION including any defects disclosed by the SELLER on the State of Ohio *Residential Property Disclosure Form*, identified by any inspections requested by either party or on any other forms or addenda made a part of this Agreement or identified by any other source. SELLER warrants to BUYER that SELLER has completed the State of Ohio Residential Property Disclosure Form accurately and thoroughly and that no additional items of disclosure have

Property Address: _____

occurred since the SELLER'S completion of that form. SELLER agrees to notify BUYER in writing of any additional disclosure items that arise between the date of acceptance and the date of recording of the deed. BUYER has not relied upon any representations, warranties or statements about the property (including but not limited to its condition or use) unless otherwise disclosed on this AGREEMENT or on the *Residential Property Disclosure Form*. BUYERS must initial one of the following:

BUYER ☐ HAS _____ (BUYER'S initials), prior to signing this offer, received a copy of the *Residential Property Disclosure Form* which was signed by SELLER on _____ (date).

BUYER ☐ HAS NOT _____ (BUYER'S initials) received a copy of the *Residential Property Disclosure Form*. This offer is subject to the SELLER completing the *Residential Property Disclosure Form* and BUYER'S review and approval of the information contained on the disclosure form within _____ days from receipt.

BUYER acknowledges that the SELLER completed the *Residential Property Disclosure Form* and agrees to hold the Brokers and their agents harmless from any misstatements or errors made by the SELLER on that form. BUYER also acknowledges and agrees that the Brokers and their agents have no obligation to verify or investigate the information provided by the SELLER on that form. BUYER hereby acknowledges that any representation by SELLER or the real estate agent(s) regarding the square footage of the rooms or structures, the lot dimensions, homeowners' fees, public and private assessments, utility bills, taxes and special assessments are approximate and not guaranteed.

Please list any and all verbal representations made by Brokers or their agents that you relied upon when purchasing this property (if none, write "none"). _____

SELLER agrees to leave the property in broom clean condition with all rubbish and personal items removed by closing.

SELLER shall pay all costs for the repair of any leak(s) in the water or gas main supply lines found between the street and foundation at the time of transfer or restoration of utilities. SELLER agrees to comply with any and all local governmental point of sale laws and/or ordinances. SELLER shall promptly provide BUYER with copies of any notices received from governmental agencies to inspect or correct any current building code or health violations. If applicable, BUYER and SELLER shall have _____ (_____) days after receipt by BUYER of all notices to agree in writing which party shall be responsible for the correction of any building code or health violation(s). In the event BUYER and SELLER cannot agree in writing, this AGREEMENT can be declared null and void by either party. In that event, SELLER and BUYER agree to sign a mutual release with instruction to the Broker for disbursement of the earnest money on deposit.

REPRESENTATIONS AND DISCLAIMERS: BUYER acknowledges that BUYER is relying upon BUYER'S own inspection and evaluation of the property, whether performed by BUYER or BUYER'S independent inspectors or contractors, in determining the property's condition or fitness. BUYER understands that Howard Hanna and its agents do not warrant the condition or systems of the property or guarantee that SELLER has disclosed all defects.

BUYER acknowledges that, except as specifically noted on lines 226-228 above, Howard Hanna and its agents have not made any representations, warranties, or agreements, express or implied regarding the condition or use of the property, including but not limited to any representation that: (a) the basement, crawl space, or slab area do not incur seepage, leakage, dampness, or standing water; (b) the heating, cooling, plumbing, or electrical system(s) or any built-in appliance is in good working condition or is completely functional; (c) the roof is weather tight and/or structurally sound; (d) the structure is free from insect infestation, lead paint, or lead paint hazards; (e) the water supply or septic system, if any, are not deficient in any respect; or (f) radon gas, urea-formaldehyde foam or asbestos insulation, or any other toxic substance including any toxic form of mold, is not present on the property.

DAMAGE: If any building or other improvements are destroyed or damaged in excess of ten percent of the purchase price prior to title transfer, BUYER may either accept the insurance proceeds for said damage and complete this transaction or may terminate this AGREEMENT and receive the return of all deposits made. In that event, SELLER and BUYER agree to sign a mutual release with instruction to the Broker for disbursement of the earnest money on deposit. If such damage is less than ten percent of the purchase price, SELLER shall restore the property to its prior condition and BUYER agrees to complete the purchase of the property.

MONEY BACK GUARANTEE: (Elect one) BUYER ☐ does elect ☐ does not elect to purchase the Howard Hanna Money Back Guarantee Program, subject to Program's terms and conditions. If BUYER elects the Program, then this Agreement and BUYER'S obligations hereunder are conditioned upon approval of BUYER'S Application to Repurchase by Home Trade-In Company, Inc. ("HTCI") within seven (7) days from Acceptance as herein defined. BUYER'S fully-executed Application, including BUYER'S agreement to pay HTCI a fee of 1% of the purchase price, is attached hereto. If HTCI does not approve the Application, then this Agreement shall be null and void and BUYER and SELLER agree to sign a mutual release whereupon the earnest money shall be returned to BUYER.

BINDING AGREEMENT: For purposes of this AGREEMENT, "acceptance" shall occur upon the written acceptance, without any material change to the last offer or counter offer, and either the verbal or written communication of that acceptance to the last offering party or their agent. For purposes of this Agreement, "days" shall be defined as calendar days. Upon acceptance, this offer and all attachments and addenda, shall become an AGREEMENT binding on BUYER and

Property Address: _____
SELLER, their heirs, executors, administrators, successors and assigns and shall be deemed to contain all the terms, conditions, representations and warranties, either expressed or implied, agreed upon by the BUYER and SELLER with respect to this transaction. All counter-offers, amendments, changes or deletions to this AGREEMENT shall be in writing and be signed by both BUYER and SELLER. Facsimile or other electronically transmitted signatures shall be deemed binding and valid. THIS IS A LEGALLY BINDING CONTRACT. The parties should consult an attorney or other professional if in need of legal or tax advice.

ADDITIONAL TERMS: _____

ADDENDA: The additional terms and conditions in the following checked addenda and/or attachments ☐ Agency Disclosure Statement; ☐ Residential Property Disclosure; ☐ VA/FHA Addendum; ☐ FHA Home Inspection Notice; ☐ Condominium; ☐ House Sale Contingency; ☐ House Sale Concurrence; ☐ Lead-Based Paint; ☐ Homeowner's Association; ☐ Application to Repurchase by Home Trade-In Company, Inc. (if BUYER elects Money Back Guarantee Program) ☐ Walk Through Addendum; ☐ Other _____
The terms and conditions of all such addenda or attachments shall supersede any conflicting terms in this Agreement.

EARNEST MONEY: In the event of a dispute between the Seller and Buyer regarding the disbursement of the earnest money, the broker is required by Ohio law to maintain such funds in the broker's trust account until the broker receives (a) written instructions signed by the parties specifying how the earnest money is to be disbursed or (b) a final court order that specifies to whom the earnest money is to be awarded. If within two years from the date the earnest money was deposited in the broker's trust account, the parties have not provided the broker with such signed instruction or written notice that such legal action to resolve the dispute has been filed, the broker shall return the earnest money to the purchaser with no further notice to the seller. The broker shall acknowledge receipt of the earnest money shown on line 31 to the escrow agent who shall credit that amount to the Buyer's escrow account. Unless otherwise stated herein, the earnest money shall be retained in the broker's trust account until after title transfer at which time it shall be applied against any compensation due the broker. Any amount by which the earnest money exceeds the compensation due the broker shall be remitted to the escrow agent.

BUYER: _____ Address: _____
Print name: _____ ZIP: _____
BUYER: _____ Phone: _____ Email: _____
Print name: _____ Date: _____

DEPOSIT RECEIPT: Receipt is hereby acknowledged, of \$ _____ earnest money, subject to the terms of the above offer.

HOWARD HANNA (License # 0000189163):
By: _____ (License # _____) Office: _____ Phone: _____

ACCEPTANCE: SELLER accepts the above offer and hereby instructs the Escrow Agent to pay from SELLER'S escrow funds a brokerage commission of \$[265], if the property is listed with Howard Hanna, and _____% of the purchase price to Howard Hanna, 6000 Parkland Blvd, 3rd Floor, Mayfield Heights, OH 44124.

Listing Broker: _____ License # _____ Listing Agent: _____ License # _____

SELLER: _____ Address: _____
Print name: _____ ZIP: _____
SELLER: _____ Phone: _____ Email: _____
Print name: _____ Date: _____

COUNTER OFFER TERMS: _____

Sellers' signature _____ Date _____ Sellers' signature _____ Date _____

RESIDENTIAL REAL ESTATE PURCHASE AGREEMENT

Form approved by the Northwest Ohio REALTORS® and the Toledo Bar Association.
This is a legal Agreement. It is recommended that both parties secure the services of an attorney.

PURCHASER(S): _____

SELLING AGENT/BROKER: _____

Phone/E-mail: _____

SELLER(S): _____

LISTING BROKER/AGENT: _____

Phone/E-mail: _____

1. **OFFER.** The undersigned purchaser(s) ("Purchaser") offers to buy from the owner(s) ("Seller") the property described below ("Property") on the terms contained in this offer ("Offer"). Upon delivery of the executed acceptance ("Acceptance"), this Offer shall become a legally binding contract ("Agreement").

2. **PROPERTY.** _____
Street Address City, Village, Township County State Zip
Parcel I.D.# _____

Legally described as: _____

The Property includes the land and all appurtenant rights, privileges and easements, all buildings and fixtures, including without limitation, all of the following as are NOW on the Property: electrical, heating, cooling, plumbing, bathroom mirrors and fixtures, awnings, screens, storm windows and doors, landscaping, disposals, TV antennas, built-in electronics wiring, ceiling fans, smoke alarms, security systems, doorbells, thermostats, garage door openers and controls, attached carpeting, and any of the following items that are checked:

- | | | |
|---|---|---|
| <input type="checkbox"/> washing machine and clothes dryer | <input type="checkbox"/> existing fireplace equipment | <input type="checkbox"/> ranges / ovens |
| <input type="checkbox"/> microwave ovens | <input type="checkbox"/> kitchen refrigerators; | <input type="checkbox"/> dishwashers |
| <input type="checkbox"/> window air conditioners | <input type="checkbox"/> other appliances _____ | <input type="checkbox"/> water softeners |
| <input type="checkbox"/> all existing window treatments | <input type="checkbox"/> satellite TV reception systems | <input type="checkbox"/> wall mounted TV(s) |
| <input type="checkbox"/> affixed gas/oil tanks not including fuel therein unless otherwise agreed by the parties; | | |

NOT Included: _____

3. **PRICE.** The Purchase Price shall be \$ _____ payable at Closing in cash, certified funds or wire transfer in immediately available funds.
4. **EARNEST MONEY.** Purchaser has paid or shall pay earnest money to _____, which earnest money shall be applied toward the Purchase Price at Closing, in the amount of \$ _____.
☐ with this Offer (to be deposited in trust account upon Acceptance).
☐ within three (3) days of Acceptance (to be deposited in trust account upon receipt).
5. **FINANCING.** This Agreement ☐ is not ☐ is conditioned on Purchaser securing ☐ Conventional ☐ FHA ☐ VA ☐ Other _____ (if Other is selected, write in type of loan) financing within _____ days after Acceptance or until _____, 20____ (the "Financing Contingency Period"). If this Agreement is conditioned upon financing and the number of days and date fields in the preceding sentence is left blank, the Financing Contingency Period is thirty (30) days from the date of Acceptance. Purchaser shall pursue such loan in good faith and with reasonable diligence. If a final clear to close for the financing cannot be obtained by Purchaser during the Financing Contingency Period, either party may terminate this Agreement by delivering written notice of termination to the other within three (3) days after the expiration of the Financing Contingency Period and the termination procedures of Paragraph 23 shall apply. If FHA or VA is selected, the following additional terms shall apply: (a) Seller may be required to pay certain fees on behalf of the Purchaser, and Seller may request information concerning these fees from the Purchaser's lender; and (b) the parties agree to execute any documents reasonably required by Purchaser's lender, FHA or VA in connection with Purchaser's FHA or VA loan, including but not limited to the FHA/VA amendatory clause and certifications as same may be amended.

Purchaser's Initials _____ Seller's Initials _____

6. **SELLER CONCESSIONS.** Seller shall pay an amount not to exceed \$_____ or _____% of the Purchase Price at Closing, toward Purchaser's loan closing fees, prepaid expenses, and/or other closing costs required by this Agreement to be paid by Purchaser or which are ordinarily deemed a purchaser's expense.
7. **CLOSING AND POSSESSION.** Closing shall be held on or before _____, 20____ ("Closing"), unless extended as provided in this Agreement or by written mutual consent. Possession shall be granted ☐ at Closing ☐ _____ days after Closing at _____:_____ ☐ A.M. ☐ P.M. (in accordance with the terms and conditions of the parties' Post-Closing Possession Addendum, if any), subject to rights of tenants, if any, listed in Paragraph 31 or in the Leased Property Addendum. If the Property is located in Lucas County, real estate taxes and assessments, both general and special, shall be pro-rated in accordance with the "due and payable" method according to Lucas County Custom. If the Property is located outside Lucas County, real estate taxes and assessments, both general and special, shall be pro-rated in accordance with the ☐ due and payable method or ☐ lien method. If no method is specified, the proration shall be in accordance with the lien method. The parties hereby expressly authorize any lender and/or closing agent to provide the parties' brokers, agents and attorneys with the closing settlement statement for review in advance of Closing.
8. **INSPECTIONS.** Purchaser, at Purchaser's expense, shall have the right until the later of _____ days after Acceptance or until _____, 20____ ("Inspection Period") to obtain inspections of the Property. Purchaser is encouraged to obtain such inspections and is advised that inspections required by FHA, VA or lenders do not necessarily eliminate the need for other inspections. Items specifically disclosed in this Agreement and in the Residential Property Disclosure Form remain subject to Purchaser's inspection rights. During the Inspection Period, Purchaser and Purchaser's inspectors and contractors shall be permitted access to the Property at reasonable times and upon reasonable advance notice to Seller. Purchaser shall be responsible for any damage to the Property caused by Purchaser or Purchaser's inspectors or contractors during such inspections. Purchaser may make a final "walk through" inspection of the Property within three (3) days prior to Closing to assure that the condition of the Property has not been materially changed. The results of Purchaser's inspections pursuant to this Paragraph 8 are subject to the satisfaction of the Purchaser.
- In the event Purchaser is not satisfied with the results of the inspections, Purchaser shall notify Seller in writing before the expiration of the Inspection Period, whereupon Purchaser and Seller shall have a period of five (5) days after receipt of such written notice of dissatisfaction to agree upon a remedy satisfactory to Purchaser (the "Remediation Period"). Purchaser shall have the right to terminate this Agreement by providing written notice to Seller at any time prior to the earlier of: (i) the expiration of the Remediation Period; or (ii) the parties' written agreement for a remedy to all unsatisfactory conditions or waiver thereof. Upon termination as provided in this Paragraph 8, the termination procedures of Paragraph 23 shall apply. **If the parties fail to reach a written agreement for a remedy to all unsatisfactory conditions or waiver thereof prior to the expiration of the Remediation Period, this Agreement shall automatically terminate.** If Purchaser and Seller agree to remedy an unsatisfactory condition of the Property, it is agreed that the remedy shall be performed in a good and workmanlike manner prior to Closing and is subject to the reasonable satisfaction of Purchaser.
- IF PURCHASER FAILS TO NOTIFY SELLER IN WRITING BEFORE THE EXPIRATION OF THE INSPECTION PERIOD THAT PURCHASER IS NOT SATISFIED WITH THE RESULTS OF ITS INSPECTIONS, PURCHASER SHALL BE DEEMED TO BE SATISFIED WITH THE RESULTS OF ITS INSPECTIONS AND PURCHASER'S RIGHT OF TERMINATION SET FORTH ABOVE SHALL BE WAIVED.**
9. **SEX OFFENDER AND VIOLENT OFFENDER REGISTRATION.** This Agreement is conditioned upon Purchaser's satisfaction with Purchaser's investigation of public records available pursuant to any applicable sex offender registration and/or notification laws and the sheriff's Violent Offender Database within five (5) days from Acceptance. In the event that Purchaser's investigation uncovers unsatisfactory information, Purchaser may terminate this Agreement prior to the expiration of the five (5) day investigation period and the termination procedures of Paragraph 23 shall apply.
10. **APPRAISAL.** This Agreement is conditioned upon the Property appraising by Purchaser's lender or an appraiser of Purchaser's choice at no less than the Purchase Price by the later of the expiration of the Financing Contingency Period or the Inspection Period. If no appraisal is obtained within the stated time period, this condition is waived and no longer a part of the Agreement. If the Property fails to appraise at or above the Purchase Price, Purchaser may terminate this Agreement prior to the expiration of the applicable time period and the termination procedures of Paragraph 23 shall apply.
11. **PROPERTY INSURANCE.** If homeowner's insurance cannot be obtained, or can be obtained only at a higher than standard rate due to the condition or claims history of the Property, then the Purchaser may terminate this Agreement by providing written notice to Seller by the later of the expiration of the Financing Contingency Period or the Inspection Period, and the termination procedures of Paragraph 23 shall apply.

Purchaser's Initials _____ Seller's Initials _____

12. **SPECIAL FLOOD HAZARD AREA.** If the Property is determined to be in a Special Flood Hazard Area, as determined by the current Flood Maps published by the Federal Emergency Management Agency, Purchaser may terminate this Agreement by providing written notice to Seller by the later of the expiration of the Financing Contingency Period or the Inspection Period, and the termination procedures of Paragraph 23 shall apply.

13. **OWNERS ASSOCIATION.** The Property ☐ is ☐ is not subject to a condominium association, homeowner's association, or other form of planned community association (in either case, the "Association"). If the Property is not subject to an Association, the remainder of this Paragraph is inapplicable to this Agreement.

Within seven (7) days after Acceptance of this Agreement, Seller will deliver to Purchaser true, complete and current copies of the declaration, the bylaws of the Association, the Association rules and regulations (if any), documents reflecting to the current financial status of the Association, and any other material document(s) relating to the creation or operation of the Association (collectively, the "Association Documents"). Purchaser shall have five (5) days after receipt of the Association Documents to review and approve the same. If Purchaser disapproves of the Association Documents, Purchaser may terminate this Agreement by providing written notice prior to the expiration of the five (5) day review and approval period and the termination procedures of Paragraph 23 shall apply.

Seller represents that: (a) the current fees/dues/assessments of the Association are \$_____ per ☐ month ☐ quarter ☐ year, which fees are paid current through the date of Acceptance and will be paid as they become due until Closing; (b) there are no recent, proposed or unpaid assessments by the Association against the Property except as disclosed in writing to Purchaser; (c) to the best of Seller's knowledge, there is no pending or threatened legal action involving the Property or the Association; (d) to the best of Seller's knowledge, the financial status of the Association is accurately reflected in the Association Documents and the Association is not currently or in the near future in danger of becoming insolvent, bankrupt or subject to receivership; and (e) to the best of Seller's knowledge, approximately _____ % of the properties that are subject to the Association Documents are currently subject to rental agreements.

Approval by the Association ☐ is ☐ is not required for the sale of the Property. If approval by the Association is required, Seller will attempt in good faith to obtain all required approvals at least fifteen (15) days prior to Closing, will deliver a copy of such approval(s) to Purchaser immediately upon receipt and will deliver the original thereof at Closing. If Seller does not obtain all required approvals within forty-five (45) days after Acceptance, Purchaser shall have the right to terminate the Agreement and the provisions of Paragraph 23 shall apply.

14. **HOME WARRANTY.** Seller ☐ shall ☐ shall not be required, at Seller's expense, to provide Purchaser a one (1) year home warranty issued by _____ at a cost not to exceed \$_____. This warranty does not cover known pre-existing conditions. This warranty does not preclude the need for nor act as a substitute for any inspections of the Property as set forth in Paragraph 8.

15. **CONDITION OF PROPERTY.** Except as previously disclosed in writing to Purchaser, Seller has no knowledge of any underground tanks, faulty major appliances, faulty electrical, plumbing, heating, cooling, sewer, septic, well or water systems, structural or chimney defects, hidden or latent defects (including leakage or water seepage) in the Property.

EXCEPT: _____

Purchaser acknowledges that, subject to Purchaser's inspection rights in Paragraph 8, Purchaser is purchasing the Property in its present physical condition ("as is" and "where is") as of the date of Acceptance, including any defects or problems specified in this Agreement or that have been otherwise disclosed in writing by Seller.

NOTICE: Ohio Revised Code Sec. 5302.30 requires most sellers to complete a Residential Property Disclosure Form.

16. **SPECIFIC DISCLOSURES:** In addition to the representations of Seller elsewhere in this Agreement, Purchaser has relied on the following additional specific disclosures and/or representations. (IF NONE, WRITE "NONE") _____

17. **DEED.** Seller shall convey to Purchaser marketable title to the Property in fee simple by transferable and recordable general warranty deed with proper release of dower, if any, or fiduciary deed, whichever is appropriate, free and clear of all liens and encumbrances, except (a) those items excepted in Paragraph 19 and (b) taxes and assessments not due and payable until after the date of Closing.

18. **PRORATIONS AND CLOSING COSTS.** Seller shall pay all taxes and assessments, both general and special, due and payable as of the date of Closing. Taxes and assessments, both general and special, shall be prorated as of the date of Closing in accordance with the method specified in Paragraph 7. In prorating taxes, the latest available rates and valuations shall be used. Agricultural tax recoupment, if any, shall be paid by Seller. Rentals, condominium fees, homeowner association fees, and interest on mortgages assumed by Purchaser shall be prorated to the date of Closing. Seller shall pay the conveyance fee. Seller and Purchaser shall pay their respective share of closing agent's closing fees.

Purchaser's Initials _____ Seller's Initials _____

19. **TITLE.** Seller shall furnish Purchaser a commitment for an ALTA Homeowners Policy of Title Insurance (or an ALTA Owner's Policy of Title Insurance when the ALTA Homeowners Policy of Title Insurance is not applicable for issuance on the transaction), in the amount of the Purchase Price, from a title company of Purchaser's choosing. Such title evidence shall be prepared and issued by _____. Seller shall pay the state filed title premium for the applicable ALTA Homeowners/Owners Policy that is issued at Closing. Purchaser shall pay all other title premiums and costs, in excess of the applicable ALTA Homeowners/Owners Policy premium, including but not limited to all lender required title insurance premiums and endorsements, the title commitment, and the title search/exam cost. The title commitment shall be continued to the date of Closing and shall show record title to be marketable in the name of Seller, free and clear from material defects, liens and encumbrances, except (a) those created or assumed by Purchaser, (b) those specifically set forth in this Agreement, (c) those liens and mortgages that will be released at (or before) Closing and removed from title, (d) rights of tenants specifically disclosed to Purchaser in Paragraph 31 or the Leased Property Addendum, (e) zoning ordinances, (f) legal highways, and (g) restrictions and utility easements of record (unless they unreasonably interfere with the location of existing buildings, the present use of the Property, or uses which Purchaser has disclosed to Seller in writing). If the title evidence reveals any other title defect(s), Seller shall have thirty (30) days after demand by Purchaser to remove such defect(s) and Closing shall be delayed accordingly. If Seller is unable or unwilling to remove the defect(s), Purchaser may accept title subject to such defect(s) or may terminate this Agreement and the termination procedures in Paragraph 23 shall apply. **The parties recognize and understand that an ALTA Homeowners/Owners Policy is an optional form of insurance to protect the Purchaser from covered title issues relating to the Property.**
20. **SELLER'S REPRESENTATIONS.** Seller represents that with respect to the Property (a) to the best of Seller's knowledge, no orders of any governmental authority are pending, (b) no work has been performed or improvements constructed that may result in future assessments, (c) no notices have been received from any public agency with respect to condemnation or appropriation, change in zoning, proposed future assessments, correction of conditions or other similar matters, (d) unless disclosed in Paragraph 31 or the Leased Property Addendum, there are no tenants in possession of the Property nor any persons who have tenancy rights to any portion of the Property, and (e) to the best of Seller's knowledge, no toxic, dangerous or other hazardous substances have been released on or from the Property and no other adverse environmental conditions affect the Property. Seller further represents that title to any personal property included in the Property being sold to Purchaser is free, clear and unencumbered, and that Seller's marital status is as indicated next to Seller's signature on the signature page of this Agreement.
21. **PURCHASER'S ACKNOWLEDGEMENTS.** Purchaser acknowledges that (a) Purchaser has examined the Property, (b) Purchaser has the opportunity to obtain additional inspections, (c) Seller has not made any representations concerning the Property upon which Purchaser has relied, except as specifically set forth in this Agreement, (d) Purchaser is not relying upon any facts set forth in any brokerage information sheet or information provided by Northwest Ohio Regional Information System (NORIS), (e) unpaid water and sewer bills may become a future lien against the Property, and (f) Seller's representations contained in Paragraphs 15 and 20 are based on Seller's actual knowledge and do not constitute a warranty concerning the condition of the Property.
22. **BROKERAGE DISCLAIMER.** Purchaser and Seller acknowledge that no broker or agent involved in this transaction has made any representations concerning the Property upon which Purchaser or Seller has relied, except as specifically set forth in this Agreement. Purchaser and Seller acknowledge that said broker(s) and agent(s) are not experts with regard to certain matters, including, but not limited to, conditions which could be revealed through a survey of the Property, title evidence for the Property, the physical condition of the Property, the necessity for repairs to the Property, the cost of repairs to the Property, building materials and/or construction techniques, the current or future fair market value of the Property, mold, mortgage financing, and/or the legal or tax consequences of the transaction contemplated by this Agreement. Purchaser and Seller acknowledge they should seek independent expert advice if any such matters are of specific concern to them. Purchaser and Seller further acknowledge that said broker(s) may receive a minimal fee for services rendered in the marketing or administering the sale of the home warranty plan as provided in Paragraph 14, and that there are other providers available, in addition to the provider(s) listed in Paragraph 14 above, offering similar home warranty services. Broker(s) are hereby expressly authorized to provide information to third parties concerning any Seller concessions or other consideration that is a part of this Agreement but not reflected in the Purchase Price.
23. **TERMINATION PROCEDURES.** If the final Offer is not accepted, all deposits shall promptly be returned to Purchaser. In the event the final Offer is accepted and becomes an Agreement and (a) the title is not marketable, (b) Purchaser elects to terminate this Agreement as set forth in Paragraphs 5, 8, 9, 10, 11, 12, 13, 19 and/or 29 or (c) any of the contingencies are not met or waived and Purchaser or Seller notifies the other within the applicable time period of such party's desire to terminate this Agreement, all deposits shall promptly be returned to Purchaser. In the event of default by either Purchaser or Seller, the other party may pursue any legal or equitable remedies against the party in default, including but not limited to specific performance. If the deposit is held by a broker it is understood that the broker shall comply with all rules of the Ohio Division of Real Estate. **If the earnest money is held by a broker and a dispute arises between Seller and Purchaser regarding the disbursement of the earnest money, the broker is required**

Purchaser's Initials _____ Seller's Initials _____

by Ohio law to maintain such funds in its trust account until the broker receives (a) written instructions signed by both parties specifying how the earnest money is to be disbursed, or (b) a final court order that specifies to whom the earnest money is to be awarded. If, within two (2) years from the date the money was deposited in the broker's trust account, the parties have not provided the broker with such signed instructions or written notice that such legal action to resolve the dispute has been filed, the broker shall return the earnest money to Purchaser with no further notice to Seller.

24. **PROPERTY MAINTENANCE AND UTILITIES.** Seller shall maintain the Property, including improvements, lawn, shrubs, trees, plumbing fixtures, electrical wiring, furnaces, and other mechanical equipment (including major appliances such as refrigerators, stoves, garbage disposals, etc.) in its present condition pending Closing and transfer of possession, normal and reasonable wear excepted. Seller shall be responsible for maintaining fire and extended coverage insurance on the Property until Closing. Seller shall pay for all utilities to date of transfer of possession and shall notify Purchaser of the date for final readings in order to avoid termination of utility service. This obligation shall survive Closing. Seller shall pay for any repairs or replacements of plumbing, gas or electrical facilities required by the utility provider at the time of transfer of utility services.

25. **RISK OF LOSS.** Risk of loss to the Property from fire or other casualty shall be borne by Seller until Closing. If any buildings or other improvements are materially damaged or destroyed by reason of fire or other casualty prior to Closing, Purchaser shall have the option to (a) complete said purchase and to receive the proceeds of any insurance payable in connection therewith or (b) terminate this Agreement and recover all deposits made hereunder.

26. **GENERAL PROVISIONS.** The following provisions apply to all paragraphs of this Agreement: (a) upon Acceptance, this Agreement shall be binding upon each of the parties and their respective heirs, legal representatives, successors and assigns; (b) this Agreement shall not be assigned by Purchaser without the prior written consent of Seller, which consent shall not be unreasonably withheld; (c) the term "Agreement" as used herein means this Residential Real Estate Purchase Agreement and all addenda, exhibits and amendments thereof; (d) this Agreement shall be governed and interpreted by the laws of the State of Ohio; (e) **time is of the essence in the interpretation and implementation of this Agreement**; (f) by signing this Agreement, Purchaser represents that all Purchasers are of legal age and capacity and have authority to enter into this Agreement; (g) by signing this Agreement, Seller represents that all Sellers are of legal age and capacity, have sole and complete authority to enter into this Agreement and to sell the Property and that the consent or approval of no other person or entity is required; (h) unless otherwise specified herein, all provisions of this Agreement shall survive Closing; (i) this Agreement may be executed in counterparts, each of which shall constitute an original; a fax or scanned copy shall constitute an executed original counterpart; (j) this Agreement ☐ may ☐ may not be executed by the parties, or either of them, by electronic signature created through any program adopted and approved by the Northwest Ohio REALTORS® (if neither option is selected, then this Agreement may be executed by electronic signature by the parties, or either of them); (k) any notices required by this Agreement shall be in writing and shall be delivered personally, by U.S. mail, postage prepaid, by facsimile, or by e-mail, and shall be deemed to be given upon actual receipt or two (2) days after mailing, whichever first occurs; (l) receipt of any notice required by this Agreement by the agent of any party to this Agreement, shall be deemed receipt of the notice by that party; (m) whenever this Agreement requires that something be done within a period of days, such period shall not include the day from which such period commences, include the day upon which such period expires, and be construed to mean calendar days, unless otherwise stated unless expressly specified to the contrary herein the term "days" shall mean calendar days; and (n) this Agreement contains the entire agreement between the parties and there are no agreements, representations or warranties, oral or written, which are not set forth herein.

27. **APPROVED FORM.** This form of Residential Real Estate Purchase Agreement has been approved by the Northwest Ohio REALTORS® as a standard form to use for sales and purchases of residential property in the Northwest Ohio area. Changes to the standard form to adapt it to individual transactions must be clearly visible and must be made by clearly identifiable additions to or marks on the form as printed or typed in its entirety. No changes, omissions or additions to the printed form may be made without the prior written approval of the Northwest Ohio REALTORS®, except within space provided at Paragraph 31 below.

28. **ADDENDA.** The following addenda are made a part of this Agreement only if checked: ☐ Short Sale ☐ Land Contract ☐ FHA or VA Mortgage ☐ Leased Property ☐ Closing Affidavit ☐ Post-Closing Possession ☐ Price Escalation ☐ First Right of Refusal ☐ Chattel ☐ Back Up Contract ☐ Lease Option ☐ Other: _____

29. **ATTORNEY'S REVIEW.** This Agreement may be rescinded by Purchaser or Seller, following review by their respective attorneys, by delivering written notice of rescission prepared by the rescinding party's attorney within 3 business days after Acceptance (excluding Saturdays, Sundays and federal holidays). **FAILURE TO RESCIND AS HEREIN PROVIDED WITHIN SUCH PERIOD SHALL CONSTITUTE A WAIVER OF THE RIGHT OF RESCISSION.**

Purchaser's Initials _____ Seller's Initials _____

30. ANTI-FRAUD DISCLOSURE STATEMENT. Electronic communications such as email, text messages and social media messaging, are neither secure nor confidential. While _____ (Brokerage Name, and for purposes of this Section 30, "Broker") has adopted policies and procedures to aid in avoiding fraud, even the best security protections can still be bypassed by unauthorized parties. Broker will never send you any electronic communication with instructions to transfer funds or to provide nonpublic personal information, such as credit card or debit numbers or bank account and/or routing numbers.

YOU SHOULD NEVER TRANSMIT NONPUBLIC PERSONAL INFORMATION, SUCH AS CREDIT OR DEBIT CARD NUMBERS OR BANK ACCOUNT OR ROUTING NUMBERS, BY EMAIL OR OTHER UNSECURED ELECTRONIC COMMUNICATION. EMAILS ATTEMPTING TO INDUCE FRAUDULENT WIRE TRANSFERS ARE COMMON AND MAY APPEAR TO COME FROM A TRUSTED SOURCE.

If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information, EVEN IF THAT ELECTRONIC COMMUNICATION APPEARS TO BE FROM BROKER, do not respond to it and immediately contact Broker. Such requests, even if they may otherwise appear to be from Broker, are likely part of a scheme to defraud you by stealing funds from you or using your identity to commit a crime.

31. ADDITIONAL TERMS (the following terms have NOT been preapproved by the Northwest Ohio REALTORS®, even if preprinted in this form, and are unique to this Agreement). _____

TIME LIMIT OF OFFER: This Offer, made on _____, 20____, remains open for acceptance until _____, 20____ at ____: ____ a.m. ____ p.m. In the event this offer is countered, this time limit shall no longer apply.

Purchaser's Signature _____ Date _____

Seller's Signature _____ Date _____

Printed Name of Purchaser _____ (Marital Status) _____

Printed Name of Seller _____ (Marital Status) _____

Purchaser's Signature _____ Date _____

Seller's Signature _____ Date _____

Printed Name of Purchaser _____ (Marital Status) _____

Printed Name of Seller _____ (Marital Status) _____

Purchaser's Attorney: _____

Seller's Attorney: _____

ALL CHANGES TO ORIGINAL OFFER AND/OR THIS PRINTED AGREEMENT MUST BE INITIALED AND SHOULD BE DATED BY SELLER AND PURCHASER.

ACCEPTANCE: Acceptance of the Offer, without change, has been delivered this ____ day of _____, 20____ and acknowledged by _____. (Failure of the parties or their agents to endorse this section upon final delivery of acceptance, while encouraged, shall not affect the validity of this Agreement.)

RECEIPT OF DEPOSIT

RECEIVED WITH OFFER \$ _____ ☐ Cash ☐ Check BY: _____ Date: _____
 RECEIVED UPON ACCEPTANCE \$ _____ ☐ Cash ☐ Check BY: _____ Date: _____

Purchaser's Initials _____ Seller's Initials _____

RESIDENTIAL REAL ESTATE PURCHASE CONTRACT

Athens County Board of REALTORS® Inc.
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This document has been prepared by the Athens County Board of REALTORS® Inc., in the State of Ohio, and is for the use of their members only. **All changes and deletions to terms should be noted on a counteroffer, and any changes to language shall be noted on an addendum to this contract identifying the specific paragraph and language changed and/or deleted.

The term "day(s)" means calendar day(s) including holidays. A calendar day ends at 11:59pm unless otherwise stated. The term "day(s) after acceptance and delivery" starts at 12:00am the first day following the date of acceptance and delivery of the contract. The number of calendar days in this contract is a specific time frame agreed upon by Seller and Buyer. All deadlines are hard and fast, and the number of calendar days cannot be modified or waived except by a written agreement signed by both Parties. Time is of the essence in this contract and all addenda created for this contract. All references to dates and times refer to Eastern Time Zone.

The term "Brokerage" shall include, without limitation, Broker and/or Broker's agents and shall include, except where this contract clearly indicates otherwise, the Seller's Broker and the Buyer's Broker, if different.

Date: _____

Upon the following terms, the undersigned Buyer agrees to buy, and the undersigned Seller agrees to sell, through the Brokerages referred to in Section 18, the Property, described as being located in the State of Ohio, County of _____, tax parcel number(s) _____ and further described as: _____ (the "Property").

- Home is a manufactured home with a VIN number as defined in R.C. 3781.06(C) ☐ Yes ☐ No (check one)

1. Purchase price shall be \$ _____

11 Additional Terms and Conditions: _____

12 Closing Date: _____ Possession Date: _____ (Please refer to section 13 for specific terms and conditions.)

2. Contingencies

- 21 **Home Sale Contingency.** This contract includes a home sale contingency. ☐ If this box is checked, please refer to the Home Sale Contingency Addendum, attached and incorporated into this contract.
- 22 **Financing/Appraisal Contingency.** Any financing and/or appraisal contingency is set forth in Paragraph 4, in this contract.
- 23 **Inspection and/or Test Contingency.** Any inspection contingency is set forth in Paragraph 8, in this contract.
- 24 **Proof of Conveyance Contingency** is set forth in Paragraph 9.3, in this contract.

3. Earnest Money Clause.

Earnest Money may be or may not be offered with a purchase contract; it is not a legal requirement. If Earnest Money is offered by the buyer, please refer to the Earnest Money Addendum, which is attached and incorporated into this contract.

Earnest money ☐ will be offered by Buyer / ☐ will not be offered by Buyer.

Buyer's Initials _____

Seller's Initials _____

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4. Financing: Buyer shall select and initial one of the following (Paragraph 4.1 (a), Paragraph 4.1(b), or Paragraph 4.2):

(a) Cash _____ (insert initials here) Buyer will pay the purchase price in cash at closing. Within _____ days after acceptance and delivery of this contract (if left blank, the number shall be three (3) days), Buyer shall deliver to the Seller or Seller's Brokerage one of the following: a letter from a financial institution, current bank statement, or other evidence reasonably satisfactory to Seller, that there are sufficient liquid funds available to complete this transaction. If selected, Paragraph 4.2, below, does not apply to this contract. If Buyer does not deliver the Prequalification Letter within the stated time-period, Seller may terminate this contract.

(b) Seller Financing. See attached addendum. Buyer _____ (if applicable, insert initials here)

4.2 Lender Financing _____ (insert initials here) This contract is contingent upon Buyer obtaining financing for the purchase of the Property, subject to provisions set forth in this Paragraph 4.2(a) and(b).

(a) Lender Prequalification: Buyer _____ (insert initials here) has delivered OR _____ (insert initials here) shall deliver within _____ days after date of acceptance and delivery (if left blank, the number shall be five (5) days), to Seller or Seller's Brokerage, a lender's pre-qualification letter or approval letter stating that Buyer's credit report has been reviewed and that Buyer is prequalified to obtain a loan sufficient to finance the purchase of the Property ("Pre-Qualification Letter"). If Buyer does not deliver the Prequalification Letter within the stated time-period, Seller may terminate this contract.

Seller's election to terminate is Seller's sole legal remedy for Buyer's failure to deliver the Prequalification Letter, bars any additional legal or other claims that Seller may have against Buyer, and constitutes Seller's consent to disburse any Earnest Money Deposit according to the Earnest Money Addendum.

(b) Loan Application: Buyer shall make formal application for a _____ (write in type of loan): Conventional, FHA, VA, USDA, or (other) loan, although Parties agree the type of loan may change. Buyer shall provide information and documentation to and otherwise comply with all reasonable requests made by the lender and closing agent during the mortgage loan application and approval process, and Buyer shall keep their credit in good standing until closing. If, at any time, the lender notifies Buyer that it will not be able to provide financing upon the terms and conditions stated in the good faith estimate, Buyer may terminate this contract by delivering a copy of the lender's written notification to Seller or Seller's Brokerage within three (3) days following Buyer's receipt thereof. Upon delivery, any Earnest Money Deposit shall be disbursed according to Earnest Money Addendum. Failure of Buyer to deliver the lender's written notification within three (3) days following Buyer's receipt of lender notification, constitutes a waiver of Buyer's right to terminate, pursuant to this provision.

4.3 Appraisal Contingency: This contract ☐ is contingent / ☐ is not contingent on Buyer's receipt of an appraisal that is in conformance with the standards of Buyer's lender, if any, and the Property appraising for equal to or greater than the contract Purchase Price. If the Property is appraised for less than the contract Purchase Price, Buyer shall have the right to terminate or renegotiate a new purchase price by providing written notice of appraised value lower than contract price, along with a copy of the appraisal report, to Seller or Seller's Brokerage, within three (3) days of Buyer's receipt of the appraisal report. If, within three (3) days of Buyer's written notice to Seller, the Parties are not able to agree upon a new purchase price and terms, this contract shall terminate, and any Earnest Money Deposit shall be disbursed according to the Earnest Money Addendum. Nothing in this contingency obligates the Buyer or Seller to agree to a new purchase price or terms. Failure of Buyer to deliver the written notice of low appraised value constitutes a waiver of Buyer's right to terminate.

5. Taxes and Assessments:

5.1 The real estate taxes for the Property for the current year may change as a result of the transfer of the Property, or as a result of a change in the tax rate and valuation. Buyer and Seller understand that real estate valuations may be subject to retroactive change by governmental authority.

Seller shall pay or credit to Buyer at closing:

(a) all delinquent taxes, including penalty and interest;

Buyer's Initials _____

Seller's Initials _____

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- (b) all assessments in which a lien is on the Property through the date of closing;
- (c) all agricultural use tax recoupments for years prior to the year of closing, if Seller has removed Property from CAUV enrollment prior to closing;
- (d) all other unpaid real estate taxes imposed by Chapter 349 of the Ohio Revised Code which are a lien for years prior to closing; and
- (e) a portion of such taxes for the year of closing, prorated through the date of closing based on a 365-day year. If taxes are undetermined for the year of closing, the proration shall be based on the most recent available tax rate and valuation, considering any applicable exemptions, recently voted millage, change in valuation, etc., whether certified or not certified.
- (f) If the Property is enrolled in the county agricultural use valuation (CAUV) program at the time of closing, and Buyer chooses not to continue CAUV enrollment, Buyer shall be responsible for any tax recoupments assessed to the Property after the date of closing.

These adjustments shall be final, except for the following: (none if nothing inserted) _____

5.2 Seller warrants it has not received any notification from a government entity or owner's association (if applicable) and is not otherwise aware of assessments for future improvements, except as disclosed on a separate addendum, which shall be attached to and incorporated in this contract.

6. Utility Charges, Condominium or Association Charges, Rentals, and Security Deposits:

☐ Please see addendum pertaining to rented or leased property. Leases shall be provided to Buyer by (if left blank, the number shall be five (5) days) after the date of acceptance and delivery of the contract.

6.1 Through the date of possession, Seller shall pay all accrued utility charges and any other charges that are or may become a lien on the Property.

6.2 At closing, Seller shall credit Buyer a prorated amount of condominium, homeowner's association or other association periodic charges. Buyer shall credit Seller a prorated amount of pre-paid condominium, homeowner's association or other association dues. Charges and/or pre-paid dues shall be prorated through the date of closing based on a 365-day year.

7. Fixtures and Equipment:

Seller shall convey to Buyer all fixtures owned by the Seller, in the same location and working order; fixtures are considered to add no value and include, but are not limited to, the following list:

- | | | |
|--|---|---|
| • All light fixtures | • Attached mirrors | • Fireplace inserts, logs, grates, doors and screens |
| • All exterior plants, trees | • Attached wall-to-wall carpeting | • Garage door openers & controls |
| • Smoke and carbon monoxide detectors | • Bathroom, lavatory and kitchen-built-in appliances | • Central and/or affixed heating and air conditioning units |
| • Landscaping lights and controls | • Central vacuum systems and attachments | • Humidifying equipment and their control apparatuses |
| • Attached floor coverings | • TV Antennas/satellite fixtures | • Mailboxes and permanently affixed flagpoles |
| • Stationary tubs | • Curtain rods and window blinds (excluding draperies and curtains) | • Outside cooking units, if attached to the Property |
| • Attached media brackets (excluding televisions and audio/visual components attached to brackets) | • Water conditioning systems | • Pumps and sump pumps |
| • Storm and screen doors and windows | • Fences, including subsurface electric fences and components | • Fixed generators |
| | • Fire, smoke and security systems and controls | • Sheds and gazebos; fixed landscaping accessories |
| | • Kitchen islands | |
| | • City-owned garbage/recycling bins | |

Buyer's Initials _____

Seller's Initials _____

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And the following, which shall be the same as of the date of Buyer's offer:

☐ Refrigerator ☐ Washing Machine ☐ Dryer ☐ Dishwasher ☐ Microhood/Microwave ☐ Gas Range
☐ Electric range ☐ Trash compactor ☐ Freezer ☐ Double oven ☐ Built-in wine cooler/refrigerator

7.1 Also including the following: _____

7.2 The following shall be excluded: _____

7.3 The following leased items shall be ☐ included ☐ excluded: _____

☐ Solar panels & accessories ☐ Water heater ☐ Propane tank ☐ Security System ☐ Kitchen appliances And: _____

8. Inspections and/or Tests

8.1 Inspections, Tests, & Reports. This contract shall be subject to the following inspection(s) to be completed by a qualified inspector of Buyer's choice, at Buyer's expense.

The Parties agree to the following inspections, tests, and reports:

☐ General Home ☐ Bedbug ☐ Mold ☐ Septic System ☐ Structural ☐ Water/Well
☐ Lead-Based Paint ☐ Radon ☐ Survey ☐ Flood Insurance ☐ Interior Gas Line ☐ Zoning
☐ Property Insurability ☐ Wood-Destroying Insect ☐ Other: _____

Inspections and/or tests will be completed by: _____ ("Completion Deadline"). If left blank, the Completion Deadline shall be ten (10) days from acceptance and delivery of the contract.

8.2 Broker recommends Buyers hire industry professionals with the highest standard of licensure/ certification available per state and local custom. For example, septic system inspections and water testing are typically conducted by a Sanitarian from the County Health Department in which the Property is located. Buyer assumes sole responsibility to select and retain qualified inspector(s) and releases Broker of any liability regarding the selection or retention of inspector(s). It is recommended that Buyer determine the status of the Property regarding the possible need for flood insurance, and the insurability of the Property.

For any and all inspections selected above, Buyer shall have until the Completion Deadline to have any and all of the inspections and/or tests completed. **Buyer shall pay the costs of all inspections and/or tests**, except Seller may be required to pay for the termite inspection in advance of closing if Buyer is purchasing the Property with a VA Loan. Buyer shall be responsible for paying for lender-required repairs unless Buyer and Seller agree to other terms in writing. Buyer shall be responsible for any damage caused by Buyer's inspections and/or tests. Seller shall cooperate in making the Property reasonably available for inspections and/or tests. Provided advance notice is provided to the Seller, Seller authorizes non-Realtors®, such as licensed appraisers or inspectors with lock box privileges via the MLS system, to access the Property without the Broker or other real estate licensee present. Seller shall have all utilities and water turned on and available for Buyer's inspections.

If Buyer does not select any inspections/tests in Paragraph 8.1, Buyer declines to conduct inspections/tests and agrees to purchase the Property in its "AS IS" present physical condition. Buyer acknowledges that Buyer is acting against the advice of Buyer's agent and broker. Buyer understands that all real Property, fixtures and equipment may contain defects and conditions that are not apparent, and which may affect the Property's use, value or safety. Buyer and Seller agree that the brokers and agents do not guarantee and in no way assume responsibility for the Property's condition.

8.3 Request to Remedy or Termination. IT IS NOT THE INTENTION OF THIS PROVISION TO PERMIT BUYER TO TERMINATE THIS CONTRACT FOR COSMETIC OR NONMATERIAL CONDITIONS, OR FOR CONDITIONS FULLY DISCLOSED IN WRITING TO BUYER BEFORE ENTERING INTO THIS CONTRACT. If Buyer is not in good faith satisfied with the condition of the Property as disclosed by the Buyer's inspections and test reports selected above, then

Buyer's Initials _____

Seller's Initials _____

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Buyer may, on or before the Completion Deadline, either terminate this contract or provide Seller with a request to remedy. A notice of termination or request to remedy must be delivered in writing to Seller or Seller's agent and must be accompanied by a copy of the inspections, test, or reports specifying the unsatisfactory conditions. Failure of Buyer to provide a notice of termination or a request to remedy on or before the Completion Deadline constitutes Buyer's acceptance of the condition of the Property and shall be a waiver of Buyer's right to terminate pursuant to this provision.

If Buyer delivers a request to remedy, Seller may provide remedy in the form of compensation or repairs, any such repairs to be reasonably acceptable to Buyer, or other resolution to which Buyer and Seller agree in writing, or Seller may decline to provide remedy. If Buyer and Seller are unable to reach a resolution as to the unsatisfactory conditions within _____ days (if left blank, it shall be three (3) days) of Buyer's request to remedy, then Buyer may terminate the contract with written notice delivered to Seller or Seller's agent within two (2) days of the deadline set forth in this sentence.

Upon termination, any Earnest Money Deposit shall be disbursed according to the Earnest Money Addendum.

9. Deed and Conveyance Status

9.1 Seller shall deliver to Buyer a good and sufficient transferable Warranty Deed, or Fiduciary Deed if appropriate, subject to all ordinances, restrictions, reservations, rights of way, and leases of record, with appropriate release of dower, if any, conveying a good and marketable title to the subject Property to Buyer free and clear of all liens and encumbrances, except taxes and assessments, both general and special from the date of closing and thereafter. Marketability of the title shall be determined in accordance with the standards of title examination adopted by the Ohio State Bar Association. The deed of Seller is to be delivered to Buyer at the closing. The closing shall be Buyer's choice, at the location of Buyer's lender, attorney, or title company within 25 miles of the Property unless otherwise agreed to in writing by Buyer and Seller. At closing Seller shall sign a title company required form and/or a standard affidavit regarding the presence of liens, encroachments, and the construction of improvements on the Property, and other off record title matters in accordance with community custom.

9.2 If title to all or part of the real estate is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association's standards of marketability and title examination, Seller may remedy or remove such defect, lien, encumbrance, or encroachment ("Defect") or notify Buyer in writing if Defect is unable to be removed. Seller must make a reasonable effort to attempt to remove the Defect. Seller shall have _____ days (if blank the number of days shall be fourteen (14) days), after receipt of notice of the Defect, to remove or resolve the Defect. Buyer may agree to accept an Owner's Title Insurance Policy paid for by Seller, specifically insuring against loss caused by reason of said defect in lieu of Seller removing Defect. The time frames herein may be extended by written agreement of the Parties. Upon termination, any Earnest Money Deposit shall be disbursed according to the Earnest Money Addendum.

9.3 This contract ☐ is ☐ is not contingent upon the Property conveying under appropriate County Auditor's newest and highest standard of conveyance, which does NOT include the special "one-time" conveyance stamp. Proof of conveyance status to be determined by Buyer or Buyer's agent within _____ days (if blank, that number shall be five (5) days) of acceptance and delivery of offer. If Property does not meet the highest standard of conveyance, it is the Seller's responsibility prior to closing, at Seller's expense, to have the legal description or survey brought to highest standard of conveyance acceptable to the County Auditor. The Parties agree the Auditor's approval of the legal description of the Property is not a guarantee of the newest and highest standard of conveyance.

10. Responsibility for Payment of Settlement Costs

Seller shall pay for deed preparation, pay real estate taxes up until the date of closing, and pay the county conveyance fee as part of Seller closing costs. Seller shall pay real estate commission as agreed in Seller's Listing agreement. Buyer shall pay all other Buyer-related closing costs required by Lender, including Owner's Title Insurance if selected by Buyer, and all inspections selected in Section 8 unless otherwise agreed to in writing by Buyer and Seller.

Buyer's Initials _____

Seller's Initials _____

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11. Owner's Policy of Title Insurance

Buyers are encouraged to inquire about the benefits and costs of an owner's policy of title insurance from the closing agent or other title insurance provider. A lender's policy of title insurance does not provide protection to Buyer. It is recommended that Buyers obtain an owner's policy of title insurance to insure their own interests. All title insurance policy and related costs are at Buyer's expense.

Buyer initials: _____

12. Damage or Destruction of Property

12.1 Risk of loss to the Property occurring prior to closing shall be borne by Seller. If any part of the Property covered by this contract shall be substantially damaged or destroyed from the date of written acceptance and delivery of this contract through the date and time of closing, Seller shall give written notice to Buyer and/or Buyer's Brokerage that the damage or destruction has occurred. Such notice must include all pertinent information regarding insurance policies and claims covering the Property that has been damaged or destroyed. The written notice shall be delivered within two (2) days from the date of the discovery of the damage or destruction. Upon receipt of written notice, Buyer may: **(a)** proceed with the transaction and be entitled to all insurance money, if any, payable to Seller under all policies covering the Property so long as the insurer is authorized to make such payment, or **(b)** permit Seller to repair and/or replace the damage or destruction, or **(c)** terminate this contract by giving written notice to Seller and/or Seller's Brokerage within five (5) days after receipt of Seller's written notice, and thereby release all parties from liability, in which event any Earnest Money Deposit shall be disbursed according to Earnest Money Addendum.

12.2 Failure by Seller to provide the required written notice to Buyer and/or Buyer's Brokerage shall result in Buyer, upon discovery of the damage or destruction, having the right to insurance proceeds, reimbursement for repairs, or termination of this contract, in which case any Earnest Money Deposit be shall disbursed according to the Earnest Money Addendum.

12.3 Failure by Buyer to so notify Seller and/or Seller's Brokerage of termination in writing within the five (5) days shall be a waiver of Buyer's right to terminate the contract under this provision.

13. Signing and Notification:

13.1 Only manual or electronic signatures on contract documents, transmitted as original or facsimile (which include photocopies, faxes, PDF, and scanned documents sent by e-mail) shall be valid for the purposes of this contract and any amendments or any notices to be delivered in connection with this contract. Only original, manually signed documents shall be valid for deeds or other documents to be delivered at closing. For the purposes of this provision, "contract documents" do not include voice mail or text messages.

13.2 The date of acceptance and delivery of this contract, counter offers, amendments or modifications shall begin when the fully executed documents are signed by the accepting parties and delivered to the other Party. Notices delivered in connection with this contract shall be effective upon delivery. Delivery of all such documents shall be made by fax, email, electronic signature delivery, or hand delivery. (NOTE: It is strongly recommended that the delivering party communicate that delivery has been made and verify that delivery has been received by the other party).

14. Closing and Possession:

14.1 Closing: This contract shall be performed, and this transaction closed, on or before _____ (date) unless Buyer and Seller agree in writing to an extension. Buyer and Seller hereby expressly authorize any lender and/or closing agent to provide the Parties' Brokerages, agents, and attorneys with the closing settlement statement (ALTA-1 or equivalent) for review in advance of closing.

Buyer's Initials _____

Seller's Initials _____

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14.2 Possession: Seller is entitled to possession through _____ (date and time). (If left blank possession shall transfer at closing.) At the time Seller delivers possession, the Property will be in the same condition as the date of acceptance and delivery of this contract, normal wear and tear excepted.

14.3 Final Verification of Condition: Buyer shall have the right to make a final verification of the condition of the Property no later than _____ days OR _____ hours prior to closing and prior to occupancy if such dates are different (if left blank, the number shall be five (5) hours) to confirm that (i) the Property is in substantially the same condition as it was on the date of this contract, normal wear and tear excepted or as otherwise agreed, and (ii) repairs, if any, have been completed as agreed.

13.4 Debris and Personal Property: Property shall be broom swept clean and Seller shall remove all debris and personal property not included in this contract, by the date and time of Buyer's possession. If Seller fails to comply with this Paragraph, Seller will be liable to Buyer for all costs associated with bringing the Property to broom clean condition.

15. Additional Provisions:

15.1 It is recommended that all parties be represented by a REALTOR® and legal counsel.

15.2 Broker strongly recommends that Parties use caution if transmitting any personal or confidential information (particularly financial information such as wire instructions) via email or as an email attachment. If a title company, attorney, bank, or settlement agent requests that any such information via email, you should proceed with caution and independently verify the source of the request by: (i) carefully checking the requester's email address and name against previous communications from a trusted source (if there is any variation at all in the names or email addresses – do not respond) and (ii) confirming the request by calling a known person at a phone number you have obtained from a trusted source (e.g., one you have used before or from a previous email with that person – do not use a phone number provided in the email request to obtain confirmation). Always be suspicious of last-minute changes to closing instructions (especially any changes pertaining to wire instructions, mailing checks, etc.).

15.3 The Buyer has been given the opportunity to examine the Property, and in making this offer, Buyer is relying solely upon the Buyer's inspections and/or tests with reference to the condition, character, and size of the Property, including the availability and quality of Internet and Cable services. Buyer has verified that the Property meets the Buyer's intended use. Buyer agrees to indemnify and hold harmless Buyer's Brokerage free from all claims, demands, damages, liabilities, and expenses (including reasonable attorney's fees) arising out of any negligence, misrepresentations, or non-disclosures by the Buyer. Seller agrees to indemnify and hold harmless Seller's Brokerage free from all claims, demands, damages, liabilities, and expenses (including reasonable attorney's fees) arising out of any negligence, misrepresentations, or non-disclosures by the Seller.

15.4 This contract constitutes the entire agreement and there are no representations, oral or written, which have not been incorporated into the contract. Any amendment to this contract shall be made in writing signed by the Buyer and Seller. All notices given in connection with this contract shall be made in a writing signed by the party giving the notice.

15.5 Upon written acceptance and delivery, this contract and any addenda shall become a legally binding agreement upon the Seller and their heirs, executors, administrators and assigns. Buyer can assign this contract. If Buyer assigns their interest in the Contract to another party, Seller must be informed within three (3) days of assignment.

15.6 Time is of the essence regarding all provisions of this contract. All deadlines are hard and fast unless otherwise agreed to in writing.

15.7 All representations, covenants, and warranties of the parties contained in this contract shall survive closing.

15.8 Professional Advice and Assistance: The Parties acknowledge and agree that the purchase of real Property encompasses many professional disciplines. While the Brokerage possesses considerable general knowledge, the

Buyer's Initials _____

Seller's Initials _____

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Brokerage is not an expert on matters of law, tax, financing, surveying, structural conditions, hazardous materials, environmental conditions, inspections, engineering, subdivision regulations, or HOA/POA bylaws. The Brokerage hereby advises the Parties, and the Parties acknowledge, that they should seek professional expert assistance and advice in these and other areas of professional expertise.

In the event the Brokerage provides names of companies or sources for such advice and assistance, the Parties additionally acknowledge and agree that the Brokerage does not warrant, guarantee, or endorse the services and/or products of such companies or sources.

15.9 Ohio Fair Housing Law: It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code, and the Federal Fair Housing Law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations; refuse to negotiate for the sale or rental of housing accommodations; or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate Brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

15.10 Residential Property Disclosure Form: Unless exempt pursuant to R.C. 5302.30, all Sellers of real property of one to four dwelling units (including those who represent themselves in a transaction with a member of the Athens County Board of Realtors), must provide Buyers with a completed Residential Property Disclosure Form. If such disclosure is required but is not provided by the time Buyer enters into this contract, Buyer may be entitled to rescission. Seller and Buyer are advised to consult an attorney for specific instructions.

15.11 Ohio's Sex Offender Registration and Notification Law: If a sex offender resides in the area, Ohio's Sex Offender Registration and Notification Law requires the local sheriff to provide written notice to certain members of the community. The notice provided by the sheriff is a public record and is open to inspection under Ohio's Public Records Law. Buyer acknowledges that any information disclosed may no longer be accurate. Buyer assumes responsibility to obtain accurate information from the appropriate county sheriff's office. Buyer shall rely on Buyer's own inquiry with the local sheriff's office, in the county where the Property is located, and shall not rely on Seller or any Brokerage involved in the transaction.

15.12 Confidentiality: Buyer and Seller authorize the Brokerage to report sales data to the MLS membership and MLS sold database as applicable and to provide this information to state certified or licensed appraisers. Buyer hereby acknowledges that there is a possibility that Seller or Seller's representative may not treat the existence or terms of offers as confidential unless confidentiality is required by law or regulation.

15.13 Lead Based Paint. With respect to housing constructed prior to January 1, 1978, Buyer must be provided with the pamphlet entitled "Protect Your Family from Lead in Your Home" and the "Lead-Based Paint and Lead-Based Hazard Disclosure Form." Every Buyer of any interest in residential real Property on which a residential dwelling was built prior to 1978 is notified that such Property may present exposure to lead from lead-based paint hazards that may place young children at risk of developing lead poisoning.

16. Duration of Offer: This offer shall be open for acceptance through _____ Date/Time

17. Response:

☐ Seller accepts. By signing below, Seller has reviewed, and Seller accepts the offer and all amendments.

☐ Seller rejects. _____ By initialing here, Seller acknowledges receipt of offer and declines to accept the terms of the proposed contract.

☐ Seller counter offers. _____ By initialing here and signing below, Seller agrees to use a counter offer form to offer different terms for the sale of the Property to the Buyer.

Buyer's Initials _____

Seller's Initials _____

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Buyer(s)

Signature	Date/Time
<hr/>	
1. Printed name(s) _____	
<hr/>	
Address _____	
<hr/>	
Signature	Date/Time
<hr/>	
1. Printed name(s) _____	
<hr/>	
Address _____	

Seller(s)

Signature	Date/Time
<hr/>	
1. Printed name(s) _____	
<hr/>	
Address _____	
<hr/>	
Signature	Date/Time
<hr/>	
1. Printed name(s) _____	
<hr/>	
Address _____	

17. Agency☐ Buying Agent ☐ Dual Agent ☐ Buyer Representing Self

Agent Name _____

Phone # _____

License # _____

Brokerage/Broker _____

Agency☐ Seller's Agent ☐ Dual Agent ☐ Seller Representing Self

Agent Name _____

Phone # _____

License # _____

Brokerage/Broker _____

Lender (if known) _____

Phone, email: _____

Title Co (if known) _____

Phone, email: _____

Buyer's Initials _____

Seller's Initials _____

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CBA/Columbus REALTORS® Real Estate Purchase Contract, Revised June 2020
Annotations by William D. Fergus, Jr., Attorney at Law. (*annotations are in italics*)
NORTHWEST TITLE FAMILY OF COMPANIES, INC. / HOLFINGER STEVENSON LAW FIRM
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Columbus, Ohio 43215
(614) 610-9908 (*direct dial*)
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This document has been prepared by the Columbus REALTORS® and the Columbus Bar Association and is for the use of their members only.
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The Columbus REALTORS®/CBA purchase contract shall be printed in 11 point Arial font, and all deviations in the standard form must be printed in **12 point or larger courier font in bold**. Use of **courier font in bold** denotes deviation from the standard Columbus REALTORS®/CBA purchase contract. All deletions from the standard form are to be noted by "strike-out".

REAL ESTATE PURCHASE CONTRACT



It is recommended that all parties be represented by a REALTOR® and an Attorney

Date: _____

Upon the following terms, the undersigned Buyer agrees to buy and the undersigned Seller agrees to sell, through the Broker referred to below, the premises, described as being located in the State of Ohio, County of _____, Tax parcel no(s). _____ and further described as:

Be careful to insert all of the parcel numbers for the subject premises. Most, but not all homes located in platted subdivisions have only one parcel number. Condominium properties often have two parcel numbers, one for the residence and another for the garage. Rural properties and homes located outside of platted subdivisions may have several parcel numbers. Information on parcel numbers is available in the MLS system and, in most counties, on the county auditor's website.

1. Purchase price shall be \$ _____.

1.1 Additional Terms and Conditions:

If additional terms and conditions are included that exceed the space allotted in this section, put the terms and conditions on a separate addendum page and have your Buyer/Seller sign both the contract and the addendum. Whenever possible, agents should use the supplemental terms and conditions available through the Columbus Realtors instead of drafting new language. If none of the pre-drafted terms and conditions apply, agents should strongly consider advising their client to retain counsel for the purpose of drafting supplemental language.

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2. Attorney Approval Clause

The Buyer or Seller may terminate this contract if the party's attorney disapproves this contract, by providing written notice of said disapproval, along with changes proposed by that party's attorney to remedy the disapproval, within _____ calendar days after acceptance hereof (this provision is not applicable if number of days is not inserted). If the other party accepts the proposed changes in writing within 3 calendar days after delivery thereof, this contract shall continue in full force and effect, as amended by the changes. The party requesting the changes may waive the request in writing prior to the expiration of the 3 calendar day period. If the contract is terminated, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12.

This paragraph obligates an attorney who disapproves the contract to propose changes that would allow him/her to approve the contract as amended.

Regarding the term "calendar days", this term for time measurement is used throughout the contract, and also applies to any reference to "days" used in the additional terms and conditions or any addendum (see paragraph 13.4). Paragraph 13.6 governs the date when the contract is deemed accepted. The first calendar day is the day after acceptance. Therefore, if, for example, the contract was accepted on January 1, 2015, a Buyer's notice of attorney disapproval must be delivered to the Seller on or before January 6, 2015. If the notice is not timely delivered, the Buyer cannot terminate the contract pursuant to this paragraph.

3. Financing: (Buyer shall select and initial one of the following)

3.1 _____ Buyer will pay the purchase price in cash at closing. Paragraph 3.2 does not apply to this contract. Buyer shall deliver to the Seller or Seller's Broker, within _____ calendar days (if left blank, number of calendar days shall be 5) after the date of acceptance of this contract, one of the following: a letter from a financial institution, current bank statement, or other evidence reasonably satisfactory to Seller that sufficient funds are available to complete this transaction. If the Buyer does not deliver such evidence within the stated time period, Seller may terminate this contract pursuant to paragraph 3.3. **OR**

3.2 _____ This contract is contingent upon Buyer obtaining financing for the purchase of the property, subject to provisions set forth in this paragraph 3.2.

This section requires the Buyer to state whether he/she intends to pay cash or finance the purchase. The remainder of Paragraph 3 deals with financing issues. Pursuant to Paragraph 3.2, the Buyer's obligation to complete the contract is contingent upon obtaining financing. The Buyer retains rights under this contingency until closing, provided he/she acts in good faith and complies with all of the financing requirements set forth in the remainder of Paragraph 3.2.

Note that paragraph 3.1 requires the Buyer to produce proof of funds. This is a Seller protection provision that gives the Seller a right, subject to conditions set forth in paragraph 3.3, to terminate the contract if such proof of funds is not timely provided. Note also that it is best practice for a buyer's agent to obtain proof of funds from a cash buyer before making an offer to purchase.

3.2(a) Lender Pre-Qualification:

Buyer _____ (insert initials here) has delivered **OR** _____ (insert initials here) shall deliver within _____ calendar days (if left blank, the number shall be 2) after date of acceptance, to Seller or Seller's Broker, a lender's pre-qualification letter stating that the Buyer's credit report has been reviewed, and that Buyer is prequalified to obtain a loan sufficient to finance the purchase of the property. If the Buyer does not deliver the pre-qualification letter within the stated time period, Seller may terminate this contract pursuant to paragraph 3.3.

3.2(b) Loan Application:

(i) Within _____ calendar days, (if left blank, the number of calendar days shall be 7) after the date of acceptance of this contract, Buyer shall:

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- a) make formal application for a (write in type of loan: Conventional, FHA, VA, USDA) _____ loan,
- b) inform the Seller or Seller's Broker in writing of the identity of the lender, and
- c) notify the lender of the Buyer's intent to proceed pursuant to applicable federal regulations.

If the Buyer does not inform the Seller or Seller's Broker in writing of the identity of the lender within the stated time period, Seller may terminate this contract pursuant to paragraph 3.3.

It is important for the Seller and Buyer to agree upon the type of loan the Buyer wants to use to finance the purchase, as FHA VA and USDA loans place constraints on the parties and financial liabilities on the Seller that vary from time to time. After making initial loan application and providing the identity of the lender to the seller, the Buyer can change lenders at his/her discretion without any contractual obligation to notify the Seller, provided that the change of lenders does not change any of the contract deadlines. (It is best practice to informally notify the Seller's agent and title agent of any change in lenders.) Note, however, that a change from a conventional loan to a FHA, VA or USDA loan materially changes the obligations of the Seller and can be grounds for the Seller to terminate the contract and possibly initiate legal action against the Buyer.

(ii) The Buyer shall provide information and documentation, and otherwise comply with all reasonable requests made by the lender and title insurance agent during the mortgage loan application and approval process. If, at any time, the lender notifies the Buyer in writing that it will not be able to provide financing upon the terms and conditions stated in the loan application, the Buyer may terminate this contract by delivering a copy of the lender's written notification to the Seller or Seller's Broker within 3 calendar days following Buyer's receipt thereof. Upon delivery, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12. **Failure of the Buyer to deliver the lender's written notification within 3 calendar days following Buyer's receipt thereof constitutes a waiver of Buyer's right to terminate the contract due to the Buyer's failure to obtain financing.**

Note that this paragraph contains critical time provisions that must be followed for the Buyer to retain rights under the contract. Most important amongst these is the obligation that the Buyer promptly notify the Seller if the Buyer has been notified that financing cannot be obtained.

3.2(c) Loan Commitment:

The Seller's obligations are contingent upon the Buyer obtaining and delivering to the Seller or Seller's Broker a loan commitment within _____ calendar days (not applicable if number of days is not inserted) after acceptance of this contract. This time period shall be known as the Loan Commitment Period. Buyer shall use good faith and reasonable efforts to obtain the loan commitment. The loan commitment shall state that the lender will provide financing for the purchase of the property, subject to conditions and qualifications imposed at the lender's discretion.

If, at the expiration of the Loan Commitment Period, the Buyer has not delivered the loan commitment to the Seller or Seller's Broker, the Seller may terminate this contract pursuant to paragraph 3.3.

"Loan commitments" issued by most lenders contain numerous conditions and qualifications, and therefore do not truly obligate the lender to provide financing. The requirement for the Buyer to obtain and deliver a loan commitment to the Seller is included in the contract as Seller protection, providing the Seller with evidence that the Buyer's loan application is proceeding toward final approval.

3.2(d) Appraisal Contingency:

If the property is appraised or otherwise valued for loan purposes for less than the purchase price stated herein, the Buyer shall have the right to terminate this contract by written notice to the Seller or Seller's Broker delivered within 5 calendar days after Buyer receives a copy of the appraisal or other documentation evidencing the lender's determination of value. The notice shall be signed by the Buyer and accompanied with the appraisal or other documentation evidencing the lender's determination of value. Upon delivery, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12. **Failure of the Buyer to deliver the written notice of termination within 5 calendar days**

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following Buyer's receipt of the appraisal constitutes a waiver of Buyer's right to terminate, pursuant to this provision.

Note that the Appraisal Contingency applies only to financed transactions, and not to cash transactions. Buyer agents should advise their clients to notify them immediately upon receipt of a low appraisal/valuation. The purpose of the 5-day period for the buyer to exercise the right to terminate is to allow the parties ample time to negotiate a possible remedy, which could involve a reduction in the purchase price and/or some other seller concession. Buyers are encouraged to terminate as soon as possible if and when it becomes apparent that the parties will not be able to resolve any issues raised by the low appraisal/valuation.

3.3 Demand for Financing Evidence:

If Seller does not receive Buyer's written notice or documents as required in paragraphs 3.1, 3.2(a), 3.2(b)(i), or 3.2(c) (the "Financing Evidence"), the Seller may, at any time until 7 calendar days before the closing date set forth in paragraph 16.1, notify the Buyer or Buyer's Broker in writing that Seller has not received the required Financing Evidence, specifying which type of Financing Evidence is overdue (a "Demand for Financing Evidence"). If Seller receives the required Financing Evidence within 3 calendar days after delivery of Seller's Demand for Financing Evidence, the parties shall proceed with the transaction. If Seller does not receive the required Financing Evidence within 3 calendar days after delivery of the Demand for Financing Evidence, Seller may, at any time thereafter until the Financing Evidence has been received, terminate this contract by delivering written notice of termination to the Buyer or Buyer's Broker, at which time the Earnest Money Deposit shall be released to the Buyer. Seller's election to terminate pursuant to this paragraph 3.3 is Seller's sole legal remedy for Buyer's failure to deliver the Financing Evidence, acts as a bar to any additional legal or equitable claims that Seller may have against the Buyer, and constitutes Seller's consent to the release of the Earnest Money Deposit. **Failure of the Seller to timely deliver the written Demand for Financing Evidence constitutes a waiver of Seller's right to terminate pursuant to this provision.**

The financing provisions in paragraph 3.2 provide a realistic balance between the interests of the Buyer and Seller. Most Buyers will not be able to complete a purchase transaction if they cannot obtain financing on reasonably acceptable terms. Buyers must therefore be able to terminate a contract when such financing cannot be obtained. Sellers, on the other hand, need to be assured that the Buyer is making a good faith effort to obtain financing. Timely delivery of the Financing Evidence is needed to assure the Seller that the Buyer is diligently proceeding to obtain financing. If a Buyer misses one or more of the deadlines set forth in paragraph 3, the Seller may terminate the contract only after following the procedures set forth in paragraph 3.3. The provisions of paragraph 3.3 provide the Buyer (and his/her broker/agent) with a second chance to submit the required Financing Evidence. Note that termination under paragraph 3.3 bars the Seller from pursuing any legal claims against the Buyer for breach of contract or any other cause of action, and obligates the Seller to release the Buyer's earnest money deposit.

4. Taxes and Assessments:

4.1 The real estate taxes for the premises for the current year may change as a result of the transfer of the premises, or as a result of a change in the tax rate and valuation. Buyer and Seller understand that real estate valuations may be subject to retroactive change by governmental authority.

Seller shall pay or credit at closing:

- (a) all delinquent taxes, including penalty and interest;
- (b) all assessments which are a lien on the premises as of the date of the contract;
- (c) all agricultural use tax recoupments for years prior to the year of closing;
- (d) all other unpaid real estate taxes and community development charges imposed pursuant to Chapter 349 of the Ohio Revised Code which are a lien for years prior to closing; and
- (e) a portion of such taxes and community development charges for the year of closing shall be prorated through the date of closing based on a 365 day year. The proration shall be based upon the most recent available tax rates, assessments and valuations as reflected in the current tax duplicate certified by the County Treasurer. official tax duplicate available as of the date of closing. Seller and Buyer acknowledge that actual bills received by Buyer after closing for real estate taxes and assessments

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may differ from the amounts prorated at closing. In any event, all prorations agreed to by the parties at closing shall be final.

These adjustments shall be final, except for the following: (none if nothing inserted)

_____.

Note that in Ohio real property taxes are paid in arrears. For example, in Franklin County tax bills for taxes incurred for the period January through June 2018 were mailed out in late December 2018, and were payable on or before January 21, 2019.

Sellers' agents should obtain information regarding special assessments that may be applicable to the premises as soon as possible following listing and before setting an asking price for the property. Paragraph 4.1(b) obligates the seller to pay or credit to the Buyer all assessments in full at closing. For example, if the premises are subject to a \$10,000.00 assessment payable over 20 years, beginning January 2017, and the transaction is closed on January 1, 2019, the Seller will be obligated to pay the remaining \$9,000.00 balance of the assessment, or credit the Buyer \$9,000.00 at closing. The Seller needs to be aware of this information when setting the asking price.

Paragraph 4.1(c) relates to agricultural property that the Buyer will no longer be using for agricultural purposes. Ohio law permits agricultural property to be taxed at a substantially lower rate than property used for other purposes. When such property is converted to a non-agricultural use, the state imposes the full tax rate for the three years immediately preceding the conversion (This is called "CAUV Recoupment"). The Buyer will be billed for CAUV Recoupment, and therefore needs to take this into account when submitting an offer for the property if the Buyer knows the property will not be used for agricultural purposes.

4.2 The community development charge, if any, applicable to the premises was created by a covenant in an instrument recorded at (insert county) _____, Vol. _____, Page number _____ or Instrument number _____. **(Note: If the foregoing blanks are not filled in and a community development charge affects the premises, this contract may not be enforceable by the Seller or binding upon the Buyer pursuant to Section 349.07 of the Ohio Revised Code.)**

Information regarding the applicability of this provision to the premises is available through the county auditor. However, caution is advised, as community development charges have occasionally been misindexed by auditors' offices as assessments, which are treated very differently in paragraph 4.1 of this contract. If you have any doubt, a title agent or real estate attorney will be able to assist you in distinguishing between a community development charge and an assessment listed on the county auditor's website.

4.3 Seller warrants that no improvements or services (site or area) have been installed or furnished, nor notification received from public authority or owner's association of future improvements of which any part of the costs may be assessed against the premises, except the following: (none if nothing inserted)

_____.

5. Fixtures and Equipment:

5.1 The consideration shall include all fixtures owned by the seller, including but not limited to:

- | | | |
|---|--|--|
| • All light fixtures | • Fences, including subsurface electric fences and components. | • Roof antenna |
| • All exterior plants, trees, landscaping lights and controls | • Fire, smoke and security systems and controls | • Smoke and carbon monoxide detectors |
| • Attached floor coverings | • Fireplace inserts, logs, grates, doors and screens | • Stationary tubs |
| • Attached media brackets (excluding televisions and other audio/visual components attached to such brackets) | • Garage door openers and controls | • Storm and screen doors and windows, awnings, blinds and window air conditioners, whether now in or on the premises or in storage |
| • Attached mirrors | • Heating and central air conditioning | • TV Antennas/Satellite reception system and components (excluding televisions and other audio/visual components) |
| • Attached wall to wall carpeting | • Humidifying equipment and their control apparatuses | |
| • Bathroom, lavatory and kitchen fixtures | • Mailboxes and permanently affixed flagpoles | |
| • Built in appliances | • Outside cooking units, if attached to the premises | |
| • Central vacuum systems and attachments. | | |

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And including the following:

5.2 The following shall be excluded: (none if nothing inserted)

5.3 The following leased items shall be excluded: (none if nothing inserted)

There are several important issues to consider when discussing this provision with your Buyer or seller. First, the legal definition of the term "fixture" with respect to real property is subject to interpretation, and therefore possible disagreement between the parties. A good rule of thumb is that if it takes a tool to remove an item from a wall, cabinet, etc., it could be considered a fixture by a buyer, or a court of law. If the seller wants to keep such item, he/she should list the item in paragraph 5.2.

Second, it is not good practice to use this contract to sell personal property (i.e. flat screen TVs, lawn tractors, and the like), as this is likely to cause trouble when a lender appraises the property. Sales of personal property should be completed outside closing. Finally, the listing agent should make inquiry with the Seller regarding any leased items that are to remain with the premises. Possible leased items include, but are not limited to electric hot water tanks, propane tanks, and water softeners.

6. Inspections and Tests:

6.1 The Broker strongly recommends that the Buyer conduct inspections and/or tests. The Broker further recommends that inspections and tests be performed by a home inspector duly licensed by the State of Ohio, or, with respect to specific components or conditions, be performed by a qualified person who is exempt from home inspector licensure requirements pursuant to Ohio Revised Code section 4764.03. The Buyer and the Seller understand and agree that the Broker neither warrants nor assumes responsibility for the physical condition of the premises.

IT IS NOT THE INTENTION OF THIS PROVISION TO PERMIT THE BUYER TO TERMINATE THIS AGREEMENT FOR COSMETIC OR NON-MATERIAL CONDITIONS.

Buyer shall be responsible for the repair of any damages caused by the Buyer's inspections and tests; repairs shall be completed in a timely and workmanlike manner at Buyer's expense.

6.2 Seller shall cooperate in making the premises reasonably available for inspections and/or tests.

6.3 Specified Inspection Period: Buyer shall have _____ (not applicable if the number of calendar days is not inserted) calendar days after the date of acceptance of the contract by both parties to have inspections, environmental inspections, and/or tests completed. This time period shall be known as the Specified Inspection Period. The number of calendar days for the Specified Inspection Period is a

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specific time frame agreed upon by the Seller and the Buyer. The number of calendar days cannot be modified or waived except by a written agreement signed by both parties.

All requests to remedy shall be submitted to the Seller or Seller's Broker within the Specified Inspection Period. Time is of the essence in completing any of the inspections, tests, and/or reports.

The Buyer, at Buyer's expense, shall have the right, and is strongly encouraged, to have any and all inspections, tests, and/or reports conducted, including but not limited to the following:

- (a) Inspection of the premises and all improvements, fixtures, and equipment;
- (b) Inspection or testing for **radon**;
- (c) Inspection or testing for mold, and any other environmental test;
- (d) Inspection or testing for lead-based paint;
- (e) A pest inspection for termite and wood destroying insects with a report provided on a FHA/VA approved form by a licensed Ohio Certified Pest (Termite) Control Applicator;
- (f) Inspection of the gas lines on the premises;
- (g) Inspection of the waste treatment systems and/or well systems by a local health authority or state EPA approved laboratory of the Buyer's choice;
- (h) Determination of the need for and cost of federal flood insurance;
- (i) Confirmation of the insurability of the premises with an insurance company of the Buyer's choice.

Buyer's agents should be careful to insert a number of days for the Specified Inspection Period. If no number is inserted, the Buyer waives the right to inspect, request remedies, and/or terminate the contract due to unsatisfactory conditions. Note also that the variety of tests that may be performed is entirely within the Buyer's discretion, subject only to the Buyer's obligation to repair any damage caused by such testing and/or the Buyer's access to the premises for such purposes.

With respect to housing constructed prior to January 1, 1978, the Buyer must be provided with the pamphlet entitled "Protect Your Family from Lead in Your Home" and the "Lead-Based Paint and Lead-Based Hazard Disclosure Form." Every Buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

Lead poisoning in young children may produce permanent neurological damage including learning disability, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

6.4 If the Buyer is **not**, in good faith, satisfied with the condition of the premises as disclosed by the Buyer's inspections, tests, and/or reports provided for in paragraph 6.3, then the Buyer may elect to proceed under one of the following provisions, 6.4(a) or 6.4(b):

6.4(a) Agreement to Remedy Period: On or before the end of the Specified Inspection Period, the Buyer shall deliver to the Seller or the Seller's Broker a written request to remedy, signed by the Buyer, stating the unsatisfactory conditions, along with a written copy of the inspections, tests, and/or reports, specifying the unsatisfactory conditions.

The Buyer and Seller shall have _____ calendar days (not applicable if the number of calendar days is not inserted), **after the end of the Specified Inspection Period**, to reach a written agreement regarding remedying the unsatisfactory conditions. This time period shall be known as the Agreement to Remedy Period. The number of calendar days for the Agreement to Remedy Period is a specific time frame agreed upon by the Seller and the Buyer. The number of calendar days cannot be modified or waived except by a written agreement signed by both parties. In the event the Buyer and Seller do **not**

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reach a written agreement regarding remedying the unsatisfactory conditions within the Agreement to Remedy Period, and the Buyer and Seller have **not** executed a written extension of the Agreement to Remedy Period, this contract shall terminate. Upon termination of the contract under this provision, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12.

OR

Prior to the end of the Agreement to Remedy Period, the Buyer can, in writing, waive such request to remedy and proceed with the contract.

The commencement of the Agreement to Remedy Period does not obligate the Seller to reach an agreement with the Buyer.

The delivery by the Buyer of a written request to remedy any unsatisfactory conditions does not preclude the Buyer from later delivering a notice of termination as contemplated by paragraph 6.4(b) below during the Agreement to Remedy Period, unless the Buyer and Seller have reached a signed agreement regarding the Buyer's written request to remedy.

OR

6.4(b) Notice of Termination: Within the Specified Inspection Period or as provided in paragraph 6.4(a), the Buyer may terminate this contract by delivering written notice of termination to the Seller or Seller's Broker, along with a written copy of the inspections, tests, and/or reports, specifying the unsatisfactory conditions. Upon termination, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12.

FAILURE OF THE BUYER TO DELIVER WRITTEN NOTICE PURSUANT TO PARAGRAPHS 6.4(a) OR 6.4(b) CONSTITUTES ACCEPTANCE OF THE CONDITION OF THE PREMISES AND SHALL BE A WAIVER OF THE BUYER'S RIGHT TO TERMINATE PURSUANT TO THIS PROVISION.

As stated in paragraph 6.3, time is of the essence when dealing with inspections and tests, repair requests, and responses/negotiations regarding such requests and responses. This is true of all deadlines stated in the contract, but is especially true with respect to paragraph 6. Failure of the Buyer to insert a number of days into this paragraph where required, or to deliver a request to remedy in a timely manner constitutes a WAIVER of the Buyer's right to make the request. Regarding the measurement of time under this provision, note that the Specified Inspection Period is not shortened if the Buyer delivers a request to remedy before the end of the Specified Inspection Period. For example, if the contract is accepted on January 1, 2013, the Specified Inspection Period is 10 calendar days, and the Agreement to Remedy Period is 5 days, the last day of the Agreement to Remedy Period would be January 16, 2013 regardless of when the Buyer delivers a request to remedy.

Based on my experience and that of the many agents and brokers I have worked with, I recommend that the parties allow a minimum of 12 calendar days for the Specified Inspection Period, and 5 calendar days for the Agreement to Remedy Period.

Paragraph 6 is probably the most important provision in this contract, and is the provision most likely to cause conflict between the parties, or even be the subject of legal action. The following examples illustrate the operation of this provision (all examples assume the parties have not agreed to extend or modify the time limits or any other aspect of paragraph 6):

- 1) *Buyer fails to deliver a request to remedy within the Specified Inspection Period -- Buyer is deemed satisfied with the condition of the premises and the contract remains in effect.*

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- 2) Buyer timely delivers a request to remedy, and the Seller does not respond prior to the end of the Agreement to Remedy Period – the contract is terminated.
- 3) Buyer timely delivers a request to remedy, the Seller responds with a counterproposal, and the parties fail to reach agreement prior to the end of the Agreement to Remedy Period -- the contract is terminated.
- 4) Same as #3, except the Buyer delivers a timely waiver of the request to remedy -- Buyer is deemed satisfied with the condition of the premises and the contract remains in effect.

Note that in all cases the Buyer controls the entire process under this section. As long as the Buyer proceeds in a timely manner, the Seller's rights are limited to not agreeing on a remedy to the Buyer's concerns as set forth in the request to remedy and/or any subsequent communication made by the Buyer within the relevant time frame. Finally, note the phrase "in good faith" used in the beginning sentence of paragraph 6.4. Under Ohio law, good faith and fair dealing are implied terms of all contracts, and courts of law strongly disfavor practices that fail to meet this standard.

6.5 Condominium or Homeowners' Association Document Provision:

6.5 (a) If the premises is a condominium unit governed by a Condominium Association, or is located within a community governed by a Homeowners' Association, Seller shall provide Buyer with the following information and documents within 5 calendar days after the date of acceptance of the contract by both parties:

- Condominium Declaration and/or Deed Restrictions, and Bylaws of the owners' association (condominium or homeowners'), including all amendments to the Declaration or Deed Restrictions except amendments that only increase the number of units or homes subject to the Declaration or Deed Restrictions;
- Condominium Board / Management Company Contact: Name, phone number, email;
- Contact information for any other mandatory membership association if applicable: Name, phone number, email;
- A statement from the association regarding this home/unit, confirming when the next (assessment) payment is due, the amount of such payment, the amount of any pending special assessment(s), and that the account is current;
- Association Initiation Fee, Reserve Contribution, and Association Transfer Fee;
- Minutes from the last 3 meetings of the directors or trustees of the owners' association;
- Minutes from the last meeting of members of the owners' association;
- Most recent version of unrecorded Rules and Regulations;
- Current Financial Statement showing the nature of the association's assets, including:
 1. Most current balance sheets, income and expense statements, and budget; and
 2. Copy of the most recent reserve study.

6.5(b) Review Period: Buyer's obligations are contingent upon satisfactory review of the documents provided pursuant to paragraph 6.5(a). Buyer shall have 5 calendar days after receipt of the last delivered documents, or 10 calendar days after the date of acceptance of the contract by both parties, whichever shall first occur, in which to review the documents. If Buyer is not provided some or all of the requested documents or is not satisfied with any of the requested documents within the stated time period for Buyer review, Buyer, as Buyer's sole remedy, may deliver a written notice of termination to Seller, and the earnest money shall be returned to Buyer pursuant to paragraph 12. **Buyer's failure to deliver the written notice of termination within 5 calendar days following Buyer's receipt of the requested documents, or 10 calendar days after the acceptance of the contract by both parties, whichever shall first occur, constitutes a waiver of Buyer's right to terminate pursuant to this provision.** This provision does not limit Buyer's right to object to matters set forth on the title commitment pursuant to paragraph 9.3 herein.

Paragraph 6.5 brings the most important condo/HOA documents to the attention of the Buyer in the same way a home inspection informs the Buyer of the physical condition of the property. It allows the Buyer to avoid surprises in solvency of the HOA, upcoming assessments, and rules/regulations that may make a difference in their decision to purchase (i.e. pet policy, ability to lease the property, parking prohibitions, storage of trailers or boats, upkeep and landscape maintenance

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requirements, etc.). Paragraph 6.5(b) creates a contract contingency that allows the Buyer to terminate the purchase contract if not satisfied with the information provided in the documents, similar to a home inspection contingency. Listing agents should note that the MLS will alert you of this contract provision whenever you list a property governed by a condominium or homeowners association. Listing agents should work with their sellers to procure all listed documents before putting the property on the market. Best practice is to notify Buyers as soon as possible if some or all of the requested documents do not exist or will not be made available.

7. Warranties:

7.1 Home Warranty or Protection Plan: The Seller, at a cost not to exceed \$ _____, plus applicable sales tax, shall provide a home warranty or protection plan from _____ (not applicable if plan name not inserted). The Broker may receive compensation for services rendered in connection with the sale of the home warranty or protection plan.

Note that former paragraph 7.2, regarding gas line warranties has been eliminated because most home warranty plans on the market provide gas line coverage, and there are very few plans that only provide gas line coverage.

8. Deed:

8.1 The Seller shall convey to the Buyer marketable title in fee simple by transferable and recordable general warranty deed, with release of dower, if any, or fiduciary deed, as appropriate, free and clear of all liens and encumbrances not excepted by this contract, and except the following:

- (a) those created by or assumed by the Buyer;
- (b) those specifically set forth in this contract;
- (c) zoning ordinances;
- (d) legal highways;
- (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with present lawful use; and
- (f) all coal, oil, gas and other mineral rights and interests previously transferred or reserved of record.

8.2 Seller has not transferred, conveyed, or reserved, nor does Seller have any knowledge of any prior transfers, conveyances or reservations of any coal, oil, gas, or other mineral rights or interests in the premises, except for the following (none if nothing inserted): _____.

Oil and natural gas interests have become a subject of concern among real estate attorneys since the commencement of oil and gas extraction through hydraulic fracturing processes ("fracking") in the last few years. Beginning in 2011, most, if not all major title insurance underwriters inserted provisions into their standard residential title insurance policies denying coverage for previously conveyed coal, oil, gas or other mineral rights or interests. Prior to the insertion of paragraph 8.1(f) into the contract, this placed the Seller in the position of warranting title to underground mineral interests without title insurance protection in the event such interests, or a portion thereof, were held by a third party.

Paragraph 8.1(f), combined with section 8.2, protects the Seller in the event that the premises are subject to a coal oil, gas or other mineral interest that is unknown to the Seller. Certain of these interests can be quite old, and can easily escape detection by a title searcher, particularly since the typical residential title search only covers a period approximately 50 years prior to the date of the projected closing. Buyers of rural property, particularly east and north of the Columbus metropolitan area, are strongly encouraged to obtain an in depth title search for such interests performed by a qualified title searcher.

The exceptions stated in section 8.1(a) through (e) have been contained in most deeds supplied by central Ohio title agents and attorneys for a number of years.

9. Title Insurance:

9.1 The Seller shall furnish and pay for an ALTA Homeowner's Commitment and Policy of Title Insurance (latest revision) in the amount of the purchase price with a copy of the subdivision or condominium plat.

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In the event that an ALTA Homeowner's Policy is not applicable for issuance on the premises, the Seller shall furnish and pay for an ALTA Owner's Commitment and Policy of Title Insurance (latest revision) with a copy of the subdivision or condominium plat.

Seller shall provide the base policy coverage for the applicable ALTA policy. Buyer is responsible for the cost of any coverage that requires additional premium for endorsements, or the deletion of any standard exceptions.

The title evidence shall be certified to within 30 calendar days prior to closing with endorsement as of 8:00 AM on the business day prior to the date of closing, all in accordance with the standards of the Columbus Bar Association, and shall show in Seller marketable title, in fee simple, free and clear of all liens and encumbrances, subject to all matters listed in Paragraph 8.1.

9.2 Seller shall deliver, or cause to be delivered, to Buyer or Buyer's Broker, a copy of the Commitment referenced in Paragraph 9.1 above no later than 15 calendar days prior to the date of closing pursuant to this agreement. If the Seller does not deliver the Commitment within the stated time period, Buyer may, by delivering written notice to Seller or Seller's Broker, either terminate this contract, or extend the date of closing to the tenth day following Seller's delivery of the Commitment. Upon termination pursuant to this provision, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12.

If has long been the customary practice in the Columbus area market for the Seller to provide title insurance to the Buyer in residential transactions. Sellers almost always have very little if any knowledge of the title insurance/settlement services business and will therefore almost always follow their agent's recommendation regarding selection of the title agent/settlement services provider. Seller's agents should verify that their preferred title agent(s) is fully compliant with American Land Title Association ("ALTA") Best Practices. The title agent should be able to supply an auditor's certification stating that the title agent is in full compliance with ALTA Best Practices.

It is extremely important for the Seller's agent to deliver the fully executed purchase contract to the title agent who will be closing the transaction as soon as possible following acceptance, as paragraph 9.2 provides the Buyer with an opportunity to terminate the contract should the Seller fail to deliver a copy of the title commitment in a timely manner. Absent language to the contrary inserted into the contract by one or both parties, the Seller, who is paying for the Buyer's title insurance policy, will select the title insurance agent.

9.3 Buyer may object if the Commitment indicates that title to all or part of the premises is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association's Standards of Title Examination, or if Buyer, in good faith, objects to liens, encumbrances, easements, conditions, restrictions, conveyances or encroachments that are disclosed in, or excepted by, the Commitment, including, without limitation, all matters listed in Paragraph 8.1(c) through 8.1(f). Buyer must notify the Seller or Seller's Broker in writing of the objection by the earlier of: (i) the Closing date, or (ii) 10 calendar days after Buyer receives the Commitment. Upon receipt of Buyer's written notice of an objection permitted herein, the Seller shall, within 30 calendar days, remedy or remove any such defect, lien, encumbrance, easement, condition, restriction or encroachment, or obtain title insurance without exception therefor. The date of closing shall be extended to the extent necessary to accommodate Seller's efforts to remedy or remove items subject to the objection. Failure of the Seller to cure the Buyer's objection shall result in termination of this contract. Seller is not obligated to incur any expense in curing Buyer's objection. In the event that the cure of an objection will subject the Seller to additional expense, Seller shall have the option to either cure the objection at Seller's expense or to terminate the Contract by delivering a written Notice of Termination to the Buyer or Buyer's Broker. Upon termination, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12. Buyer's failure to object as permitted herein constitutes a waiver of Buyer's right to object.

This paragraph provides the Buyer with an opportunity to review the title commitment prior to closing and make good faith objections as may be warranted. The "liens, encumbrances, easements, conditions, restrictions, conveyances or encroachments" that may be the subject of a good faith objection to title are too numerous to discuss here. Certain of these items, such as a clause contained in a subdivision's restrictive covenants that conflicts with the Buyer's intended use

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of the property, can't be cured, and may cause the contract to be terminated. Others, such as a large federal tax lien, may not be curable as a practical matter. Many of these items will cause a lender to refuse to lend on the premises unless cured. A title agent, through its attorney, may inform the parties of a problem with title, and may also be able to recommend a course of action to remove the defect. When there is any doubt whatsoever regarding provisions contained in a title insurance commitment, counsel should be retained by the parties. In any event, the analysis/interpretation of a title insurance commitment constitutes the practice of law, and real estate broker and agents should avoid expressing an opinion on such matters.

9.4 If required by the Buyer's lender, the Buyer shall pay any expense incurred in connection with the mortgagee title insurance issued for the protection of the Buyer's lender. If the Buyer or Buyer's lender desires a current survey, the Buyer shall furnish and pay for such survey.

9.5 At closing, the Seller shall sign and deliver to Buyer and title insurer an affidavit with respect to off-record title matters, in accordance with the community custom.

10. Utility Charges, Condominium Charges, Interest, Rentals, and Security Deposits:

10.1 Through the date of possession, the Seller shall pay all accrued utility charges and any other charges that are or may become a lien on the premises.

10.2 Adjustments shall be made through the date of closing for (a) rentals, (b) interest on any mortgage assumed by the Buyer, and (c) condominium or other association periodic charges.

10.3 Security deposits shall be transferred to the Buyer.

10.4 At closings for condominium properties or properties subject to a homeowners' association, Buyer shall pay all initial reserves and/or capital contributions that are charged by any owner's association (condominium or otherwise), or civic association in connection with the sale or transfer of the premises, as well as any fee associated with lender-required document costs. Seller shall pay all other fees that are charged in connection with the sale or transfer of the premises, including without limitation all transfer, processing, expediting, delivery, statement or management company fees.

11. Damage or Destruction of Premises:

NOTE: IT IS STRONGLY RECOMMENDED THAT, UPON DISCOVERY OF DAMAGE OR DESTRUCTION OF PREMISES, THE PARTIES RETAIN LEGAL COUNSEL.

11.1 Risk of loss to the premises and appurtenances occurring prior to closing shall be borne by the Seller.

11.2 If any part of the premises covered by this contract shall be substantially damaged or destroyed from the date of written acceptance of this contract through the date and time of closing, the Seller shall give a written notice to the Buyer and/or Buyer's Broker that the damage or destruction has occurred. Such notice must include all pertinent information regarding insurance policies and claims covering the premises that has been damaged or destroyed, including the amount of any applicable policy deduction. The written notice shall be delivered within 2 calendar days from the date of the discovery of the damage or destruction. Upon receipt of such notice, the Buyer may:

(a) agree to extend the closing date to the extent reasonably necessary to allow Seller to restore the premises to its previous condition;

(b) accept the premises in its damaged condition with an assignment of insurance proceeds, if any are available; or

(c) terminate the contract by giving written notice to Seller and/or Seller's Broker. Upon termination the earnest money deposit, including any non-refundable deposits, shall be returned to the Buyer pursuant to paragraph 12.

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11. Failure by the Buyer to notify the Seller and/or Seller's Broker in writing within 10 calendar days from receipt of the notice of damage or destruction that Buyer is electing to proceed pursuant to paragraphs 11.2(a) or (b) shall constitute an election by the Buyer to terminate the contract pursuant to paragraph 11.2(c).

11.4 Failure by the Seller to provide the required written notice to the Buyer and/or Buyer's Broker shall result in the Buyer, upon discovery of the damage or destruction before closing, having all rights set forth in paragraph 11.2.

11.5 If Buyer discovers the damage or destruction after closing, Buyer shall have the right to pursue all legal remedies.

Real estate agents rarely encounter the circumstances described in this provision, and therefore tend to lack the experience and expertise to deal with the situation. This provision contains deadlines, and consequences for failure to meet such deadlines, that may be quite damaging to the interests of either party. It is therefore important that, upon being informed of damage to or destruction of the premises occurring when in contract and prior to closing, the agents for all parties recommend to their clients that counsel be retained.

12. Earnest Money Deposit:

12.1 The Buyer shall make an Earnest Money Deposit in the amount of \$ _____ (Paragraph 12 is not applicable if no amount inserted).

12.1(a) The Earnest Money shall be deposited (Buyer shall select and initial one of the following):

_____/_____/_____ with the Buyer's Broker not later than 3 calendar days after acceptance of this contract by both parties in writing.

OR

_____/_____/_____ with the Buyer's Broker not later than 3 calendar days after the expiration of the Agreement to Remedy Period as set forth in paragraph 6.4 provided this Contract has not otherwise been terminated.

12.1(b) Within 3 calendar days of the receipt of the earnest money, the Buyer or Buyer's Broker shall notify the Seller or Seller's Broker in writing that Buyer has made the earnest money deposit (the "Deposit Notice").

12.1(c) If Seller or Seller's Broker does not receive the Deposit Notice within 3 calendar days following the date set forth in paragraph 12.1(a) for deposit of the Earnest Money, Seller may, at any time until Seller or Seller's Broker has received the Deposit Notice, notify Buyer or Buyer's Broker in writing that Seller has not received the Deposit Notice (a "Deposit Notice Demand"). If Seller receives the Deposit Notice within 3 calendar days after delivery of Seller's Deposit Notice Demand, the parties shall proceed with the transaction. If Seller does not receive the Deposit Notice within 3 calendar days after delivery of the Deposit Notice Demand, Buyer will be in breach of this contract and Seller may, at any time thereafter until the Deposit Notice has been delivered, terminate this contract by delivering written notice of termination to the Buyer.

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Paragraph 12.1 has been substantially redrafted to reflect changes in the real estate market. Due to the increasing use of electronic signatures, Buyer's agents commonly collect earnest money after the contract has been executed by the parties. Also, in an increasing number of transactions the Buyer is electing to make the earnest money deposit following the Request to Remedy period. Paragraph 12.1 provides the parties with alternative times for making the earnest money deposit. Paragraph 12.2 requires the Buyer's broker/agent to notify the Seller's broker/agent that the earnest money was received in a timely manner (the "Deposit Notice"). If the Deposit Notice is not timely delivered, the Seller can declare a breach and terminate the contract only after following the provisions set forth in paragraph 12.1(c). Note that the "second chance" given to the Buyer's broker/agent only applies to the Deposit Notice, and not to the earnest money deposit itself, which must be made in a timely manner. Also note that if the Seller terminates pursuant to this provision, he/she retains the right to sue for damages, and is not required to release any earnest money deposit that has been delivered to the Buyer's broker.

12.2 Upon receipt of the earnest money by the Broker, the earnest money shall be deposited in the Broker's trust account.

Earnest Money Deposit Receipt

Broker acknowledges receipt of the Earnest Money Deposit set forth in Paragraph 12.1, by cash or check (check# _____), which shall be held, deposited and disbursed pursuant to paragraph 12.

Brokerage _____, By _____, Date _____

Agents need to be aware that it is a violation of Ohio law to hold a deposit without promptly depositing the deposit in the broker's escrow account.

12.3 If any written contingency is not satisfied or waived, or if the Seller fails or refuses to perform or if the Buyer terminates this contract pursuant to any of its applicable provisions, all earnest money deposited hereunder shall be returned to the Buyer. If the Buyer fails or refuses to perform, the earnest money deposited hereunder shall be paid to the Seller. In any event, except as provided in paragraph 3.3, and subject to collection by the Broker's depository, all earnest money deposited hereunder is to be disbursed as follows:

- (a) The transaction closes and the Broker disburses the earnest money deposited hereunder to the Buyer or to the closing or escrow agent to be applied to the purchase price.
- (b) The parties provide the Broker with written instructions that both parties have signed that specify how the Broker is to disburse the earnest money deposited hereunder and the Broker acts pursuant to those instructions.
- (c) The Broker receives a copy of a final court order that specifies to whom all earnest money deposited hereunder is to be awarded and the Broker acts pursuant to the court order.
- (d) All earnest money deposited hereunder becomes unclaimed funds as defined in division (M)(2) of section 169.02 of the Revised Code, and, after providing the notice that division (D) of section 169.03 of the Revised Code requires, the Broker has reported the unclaimed funds to the director of commerce pursuant to section 169.03 of the Revised Code and has remitted all of the earnest money to the director.
- (e) In the event of a dispute between the Seller and Buyer regarding the disbursement of any earnest money deposited hereunder, the Broker is required by Ohio law to maintain such funds in his trust account until the Broker receives (1) written instructions signed by the parties specifying how the earnest money is to be disbursed or (2) a final court order that specifies to whom the earnest money is to be awarded. If within two years from the date the earnest money was deposited in the Broker's trust account, the parties have not provided the Broker with such signed instructions or written notice that such legal action to resolve the dispute has been filed, the Broker shall return the earnest money to the Buyer with no further notice to the Seller.

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12.4 Except as provided in paragraph 3.3, the return or payment of the earnest money deposit hereunder shall in no way prejudice the rights of the Seller, Buyer, or Broker in any action for damages or specific performance.

Paragraphs 12.3 and 12.4 normally become an issue only when there is a dispute between the parties regarding an attempted termination or rescission. The first two sentences of paragraph 12.3 are aspirational, in that the parties are informed what should happen in the event the transaction fails to close. The remainder of paragraph 12.3 provides the broker with specific instructions regarding the disposition of the earnest money deposit. Also note that the parties can resolve the issue of disposition of the earnest money deposit without relinquishing any right to proceed with legal action at a later time. Agents should be careful to use the appropriate form depending on whether the parties intend to distribute the earnest money deposit as part of a full and final settlement/release, or intend to preserve their legal rights.

13. Additional Provisions:

13.1 This contract constitutes the entire agreement and there are no representations, oral or written, which have not been incorporated herein. Any amendment to this Contract shall be made in writing signed by the Buyer and Seller. All notices given in connection with this contract shall be made in writing signed by the party giving such notice.

It is crucial that ALL agreements between the parties regarding the real estate transaction be contained in the contract and any subsequent amendments or addendums. The last two sentences of paragraph 13.1 are a statement of Ohio law on the subject of contracts for the conveyance of real property.

13.2 Time is of the essence regarding all provisions of this contract. Whether or not so stated elsewhere in this contract, no deadline or time period under this contract can be modified or waived except by written agreement signed by both parties. Repetition of this provision in any given paragraph of this contract is intended for emphasis only, and shall not reduce the effect of this paragraph as to any other provision of this contract.

This provision is an instruction to the parties and, if needed, a court of law that all of the deadlines in the contract are to be fully enforced unless the parties agree otherwise in writing.

13.3 All representations, covenants, and warranties of the parties contained in this contract shall survive the closing.

13.4 Term Definition: The term "Broker" shall include, without limitation, Broker and/or Broker's agents and shall include collectively, except where the context clearly indicates otherwise, both the Seller's Broker and the Buyer's Broker, if different. The term "day(s)" means calendar day(s). All references to dates and times refer to Columbus, Ohio, time.

13.5 Signatures: Only manual or electronic signatures on contract documents, transmitted in original or facsimile (which includes photocopies, faxes, PDF, and scanned documents sent by any method) shall be valid for purposes of this contract and any amendments or any notices to be delivered in connection with this contract. For the purposes of this provision, "contract documents" do not include voice mail, email messages or text messages.

Paragraph 13.5 permits the use of electronic signatures, provided that the electronic signature appears on the face of the contract, addendum, amendment, or notice. Agents and brokers are strongly cautioned to avoid using their clients' e-signatures to sign contract documents, even with their clients' permission. Agents/brokers are encouraged to use commercially available e-signature systems with security features that make it difficult or impossible for clients' e-signatures to be appropriated by brokers, agents or any third parties.

13.6 The date of acceptance of this Contract, counter offers, amendments or modifications thereto shall be when the final writing signed by the parties is delivered to the offering party. Notices delivered in

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connection with this contract shall be effective upon delivery. Delivery of all such documents shall be made by fax, email, text or hand delivery.

(NOTE: It is strongly recommended that the delivering party verify that delivery has been received by the other party.)

It is extremely important that the parties and their agents agree on the date of acceptance, as many of the deadlines in this contract are calculated from the date of acceptance. As with all contract documents, agents are strongly advised to confirm receipt of delivery by return email, phone call, text message or other reliable method, and to keep a record of such confirmation in the client file. Note that using the U.S. mail is NOT an acceptable delivery method.

13.7 Foreign Investments in Real Property Tax Act ("FIRPTA"). If Seller is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires Buyer to withhold 15% of the amount realized by Seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption or reduced rate of withholding applies. If withholding is required, Treasury Regulations require Sellers and Buyers to provide their U.S. federal tax identification number on all filings. Seller and Buyer agree to execute and deliver any document reasonably necessary to comply with FIRPTA requirements.

NOTE: Buyer and Seller are advised to determine whether Seller is a "foreign person" as defined by FIRPTA as soon as possible.

Determining whether a seller is a "Foreign Person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code can be quite complicated. Seller agents should ask ALL sellers whether they are U.S. citizens or, if not, permanent residents holding a valid "Green Card" at the time of listing. If the answer to both questions is "no", then the seller should be advised to consult with a tax attorney or certified public accountant immediately. The seller's agent should notify the title agent closing the transaction immediately upon discovering that the seller may be a Foreign Person.

14. NOTICES TO THE PARTIES:

14.1 Professional Advice and Assistance: The parties acknowledge and agree that the purchase of real property encompasses many professional disciplines. While the Broker possesses considerable general knowledge, the Broker is not an expert on matters of law, tax, financing, surveying, structural conditions, hazardous materials, environmental conditions, inspections, engineering, etc. The Broker hereby advises the parties, and the parties acknowledge, that they should seek professional expert assistance and advice in these and other areas of professional expertise.

In the event the Broker provides to the parties names of companies or sources for such advice and assistance, the parties additionally acknowledge and agree that the Broker does not warrant, guarantee, or endorse the services and/or products of such companies or sources.

14.2 Ohio Fair Housing Law: It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code, and the Federal Fair Housing Law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations; refuse to negotiate for the sale or rental of housing accommodations; or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

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14.3 Residential Property Disclosure Form: With respect to the sale of real property that has from one to four dwelling units, most Sellers will be required to provide the Buyer with a completed Property Disclosure Form complying with the requirements of Ohio law. If such disclosure is required but is not provided by the time the Buyer enters into this agreement, the Buyer may be entitled to rescind this agreement by delivering a document of rescission to the Seller or the Seller's Broker, provided such document of rescission is delivered prior to all three of the following dates: (a) the date of closing, (b) 30 days after the Seller accepted the Buyer's offer, and (c) within 3 business days following the receipt by the Buyer or the Buyer's Broker of the Property Disclosure Form or amendment of that form.

As stated in this provision, most, but not all Sellers must provide a completed and signed Residential Property Disclosure Form to the Buyer. It is best practice for agents to have Sellers fill the form out upon listing the property, and to have the completed form available for examination by all potential buyers. If, in the course of marketing the property, a defective condition is revealed by a professional inspection or otherwise, the Sellers should amend and re-execute the form. Agents should not involve themselves in a seller's decision regarding whether to disclose any particular condition, except to remind their clients that, when in doubt, it is always best to disclose!

14.4 Ohio's Sex Offender Registration and Notification Law: If a sex offender resides in the area, Ohio's Sex Offender Registration and Notification Law requires the local sheriff to provide written notice to certain members of the community. The notice provided by the sheriff is a public record and is open to inspection under Ohio's Public Records Law.

The Buyer acknowledges that any information disclosed may no longer be accurate. The Buyer assumes responsibility to obtain accurate information from the sheriff's office. The Buyer shall rely on the Buyer's own inquiry with the local sheriff's office and shall **not** rely on the Seller or any Broker involved in the transaction.

14.5 Concessions: Buyer and Seller authorize the Broker to report sales and financing concessions data to the MLS membership and MLS sold database as applicable and to provide this information to state licensed appraisers researching comparables, upon inquiry, to the extent necessary to adjust price to accurately reflect market value.

15. Closing and Possession:

15.1 Closing: This contract shall be performed, and this transaction closed, on or before _____ unless the parties agree in writing to an extension. The Parties hereby expressly authorize any lender and/or closing agent to provide the parties' brokers, agents, and attorneys with the closing settlement statement (ALTA-1 or equivalent) for review in advance of closing.

15.2 Final Verification of Condition: Buyer shall have the right to make a final verification of the condition of the Property within _____ calendar days prior to the day of closing (if left blank, the number of calendar days shall be 2) to confirm that the premises are in the same condition as they were on the date of this contract, or as otherwise agreed, and that repairs, if any, have been completed as agreed.

15.3 Possession: Seller is entitled to possession through _____. At the time the Seller delivers possession, the premises will be in the same condition as the date of acceptance of this contract, normal wear and tear excepted, and except as provided in paragraph 11.

Buyers are advised to obtain a signed lease agreement from the Seller if the Seller is to remain in possession of the premises for more than a few days beyond closing. Also, responsibility for damage or destruction of the premises transfers to the Buyer at closing, so Sellers who remain on the premises after closing are encouraged to obtain insurance coverage for their possessions, and Buyers should contact their insurance agent to ensure that their policy covers the premises during the Seller's.

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15.4 Debris and Personal Property: The Seller shall remove all debris and personal property not included in this contract by the date and time of the Buyer's possession.

16. Duration of Offer:

This offer shall be open for acceptance through _____.

The undersigned Buyer agrees to the terms and acknowledges the receipt hereof:

Signature: _____
Print Name: _____
Date Signed: _____

Signature: _____
Print Name: _____
Date Signed: _____
Address: _____

Phone #: _____
Deed to: _____

Attorney: _____
Ofc. #: _____
Fax #: _____
Email: _____

Brokerage: _____
Brokerage License #: _____
MLS Office ID #: _____
Ofc. #: _____
Fax #: _____
Address: _____

Agent: _____
Agent License #: _____
Phone #: _____
Alternate Phone #: _____
Fax #: _____
Email: _____

The undersigned Seller agrees to the terms and acknowledges the receipt hereof:

Signature: _____
Print Name: _____
Date Signed: _____

Signature: _____
Print Name: _____
Date Signed: _____
Address: _____

Phone #: _____

Attorney: _____
Ofc. #: _____
Fax #: _____
Email: _____

Brokerage: _____
Brokerage License #: _____
MLS Office ID #: _____
Fax #: _____
Address: _____

Agent: _____
Agent License #: _____
Phone #: _____
Alternate Phone #: _____
Fax #: _____
Email: _____

Chapter 2:

Negotiating and Drafting

Purchase and Sale Agreements

for Commercial Real Estate

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Chapter 2:

Negotiating and Drafting Purchase and Sale Agreements for Commercial Real Estate

Jacinto A. Núñez, Esq.
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I. General

A. *Purchase and sale contract performs two significant functions in transaction for purchase and sale of real estate.*

First, contract is “road map” for transaction from contract to closing. Second, contract establishes respective rights and liabilities of parties in transactions that do not close, whether by reason of a failure of a contract contingency or a default. In negotiating and drafting contract, be mindful of both of these functions.

B. *Consider your client.*

1. What role does your client want you to play in the transaction?

Are you to negotiate contract, consult with client to assist in negotiating contract, or draft contract as negotiated by client?

2. What is your client’s experience level in similar transactions?

This will affect degree to which you might recommend your involvement in negotiation. If client is inexperienced, you might perform a service by referring your client to competent professionals to assist in the transaction (e.g., environmental engineer or surveyor).

3. Understand your client’s general intentions, which should guide you in negotiating and drafting contract.

C. *Consider the property.*

1. What type of property is involved?

The various types of commercial property—office, apartment, hotel, retail, industrial, or undeveloped land—present different issues to be covered by the contract.

2. What is the intended use of the property?

Does buyer intend to occupy as owner, to lease, or to develop?

3. Where is the property located?

Are there any special concerns raised by the location that should be addressed in contract?

D. *Understand the transaction.*

What are the general terms that have been agreed upon? What terms are open to negotiation? What is client's bargaining power? In light of client's bargaining power, what terms can reasonably be negotiated?

E. *Negotiation.*

Although there are certain provisions that are commonly included in purchase and sale contracts, contract is subject of negotiation. There are no set rules as to the provisions of purchase and sale contracts. Some typical provisions are discussed in Contract Provisions, below.

II. Preliminary Documents

A. *Confidentiality agreement.*

At outset of negotiation (prior to execution of contract), buyer often wants to obtain property information from seller to begin due diligence while negotiation of contract proceeds. Seller generally willing to provide property information at this point, because that might permit a shorter due diligence period in the contract. This often leads to a confidentiality agreement, whereby buyer agrees to maintain the confidentiality of the property information provided. Seller should consider requiring buyer's broker to sign.

B. *Letter of intent.*

Because of the time involved in negotiating and drafting a contract, parties often enter into a letter of intent as an intermediate step in order to set forth their common understanding of the general terms of a contract to be entered. Be very

careful in using letters of intent, because if a letter of intent includes the material terms of a contract, it might be enforceable. If you are consulted, be certain that the letter of intent specifically provides that the parties do not intend it to be enforceable as a contract.

III. Contract Provisions

A. *The parties.*

1. Use exact names.
2. Identify each party as an individual, corporation, partnership, or limited liability company.

Identity of parties might affect various other contract provisions.

- a. If seller is an individual, seller's spouse should sign contract to obligate spouse to release dower at closing.
- b. If buyer is an individual but intends to assign to an entity to be formed, buyer should negotiate sufficient flexibility in assignment provision.
- c. If seller is an entity, contract might include representations and warranties by seller regarding entity status and authority.
- d. If a party is a "shell" entity, the other party might require a guaranty.

B. *Effective date of contract.*

Certain periods provided for in contract (e.g., contingency period or time for closing) are likely to be tied to date of contract. Contracts frequently are signed by parties on different dates. Contract should specify its effective date, or the manner for determining the effective date (e.g., date of last execution), in order to avoid inconsistent dates and resulting confusion.

C. *Description of property being sold.*

1. **Real estate.**
 - a. Include best available description of the land. Use legal description from most recent title document if it is available, and you are certain that it describes property intended to be sold.
 - b. Include brief description of improvements.
2. **Any personal property being sold with the real estate should also be described.**
 - a. Tangible personal property—equipment, furniture, and the like. Attach inventory, if available.

- b. Intangible personal property.
 - i. Leases, contracts, warranties, licenses, trade names, etc.
 - ii. Plans, specifications, engineering information, and other technical information regarding property.

D. Purchase price and payment.

1. Amount of purchase price.

- a. Price is generally fixed, but is sometimes subject to adjustment on the basis of acreage disclosed by survey completed after contract. If price subject to adjustment on the basis of acreage, buyer might try to limit to usable acres (e.g., exclude portions of property subject to highway right-of-way or otherwise unusable).
- b. Allocation of purchase price between real and personal property and between land and improvements might be important to parties for tax reasons. Parties might be able to agree on these allocations. However, parties' tax motivations might not coincide, and it is often impractical for parties to agree on allocation.

2. Manner of payment.

a. Cash (immediately available funds) upon closing.

b. Seller financing.

- i. Specify portion of purchase price that seller will finance.
- ii. Specify all material terms of seller financing, including interest rate, term, repayment provisions, prepayment rights, security, partial release provisions, etc. It is generally best to do this by attaching copies of the seller financing documents as exhibits to the contract. Although this practice will likely extend negotiation of contract, it will avoid later disagreement as to loan terms and the need to negotiate loan documents after contract is entered.

c. Assumption of existing mortgage.

- i. Buyer should review loan documents prior to entering contract to confirm that they are acceptable.
- ii. Confirm that assumption is permitted under terms of mortgage. If assumption not permitted, contract should be contingent upon obtaining consent of existing mortgagee to assumption.
- iii. Is seller to be released from assumed mortgage loan? If so, make that a condition of contract.

- iv. Buyer should require various representations and warranties by seller regarding assumed loan.
 - (a) Balance of loan being assumed. This is important as it will affect the amount of cash required at closing (purchase price less assumed loan balance equals cash required).
 - (b) Seller has furnished to buyer true copies of all loan documents and all amendments.
 - (c) No defaults.
- v. Buyer should require estoppel certificate of lender confirming seller's representations and warranties regarding assumed loan.
 - (a) Obtain at outset of contract period, in order to avoid spending time and money on transaction if there are problems with loan.
 - (b) Obtain again at time of closing to confirm status of loan.
- vi. Specify who pays assumption fee, attorneys' fees, and any other charges of lender whose loan is to be assumed.
- vii. Is assumed loan to be modified as a condition of the contract? If so, specify the modifications and make the contract contingent on obtaining the lender's agreement to those modifications.

E. Earnest money deposit.

- 1. Amount.
- 2. Form—cash, letter of credit, or other form?
- 3. Who is to hold?
 Buyer generally does not want to pay directly to seller. Deposit generally held by third party, such as broker or title company.
- 4. Is deposit to be deposited in an interest-bearing account? If so, who is entitled to interest?
- 5. Application of deposit.
 - a. Upon closing, deposit to be applied against purchase price.
 - b. If closing does not occur because of default by buyer, deposit to be paid to seller. Contract should specify whether payment of deposit to seller under these circumstances is liquidated damages for buyer's default.

- c. If closing does not occur because of default by seller or any other reason other than default by buyer (e.g., failure of contingency), deposit should be returned to buyer. If seller defaults, return of deposit to buyer should not be liquidated damages and should be without prejudice to buyer's rights for breach of contract.

F. Contingencies.

1. Contingencies are most commonly for benefit of buyer.

However, under certain circumstances, it is appropriate for contract to include contingency for benefit of seller (e.g., release of seller from liability under assumed loan, ability to obtain waiver of prepayment fee, or review of buyer's credit if seller providing financing).

2. Purpose.

Purpose of contingencies is to allow the benefited party a period of time after date of contract to make determinations regarding specified matters that are critical to the party's ability or willingness to conclude the transaction and that cannot reasonably be made as of date of contract. Important to discuss in detail with your client any specific contingencies to be included.

3. Some common buyer contingencies.

- a. Financing.
 - i. Buyer obtaining new financing.
 - ii. Approval of loan assumption.
- b. Buyer determining that condition of property satisfactory.
 - i. Environmental.
 - ii. Structural and other physical aspects.
- c. Buyer confirming that satisfactory utility services available.
- d. Buyer determining that intended use of property permitted under zoning and land use laws.
- e. Buyer determining that all permits and licenses necessary for intended use of property are in place or can be obtained.
- f. Financial feasibility—review of books and records.
- g. Review of leases and contracts.

4. Considerations.

- a. Buyer wants its contingencies to be as broad and subjective as possible, with long periods of time to satisfy. Seller wants buyer's contingencies to be specific and objective, and to require buyer to proceed in good faith to attempt to satisfy within a short period of time. Contingencies often highly negotiated.
- b. Specific time period should be set for each contingency; not necessarily the same for each contingency. Determine time period for each contingency on basis of time reasonably necessary to satisfy the contingency.
- c. Provide what happens if buyer fails to give notice of satisfaction or failure of contingency by end of contingency period. Does buyer's silence equal failure of contingency or satisfaction of contingency?

G. *Title matters: title evidence and survey.*

1. Title evidence.

- a. Specify type of title evidence to be furnished or obtained.
- b. Specify which party is responsible for furnishing and paying for title evidence. Custom varies in different parts of state, but subject to negotiation.
- c. Specify which title insurance company will issue title insurance, or which party is to select title insurance company.
- d. When is title evidence to be furnished? Within specified number of days after date of contract.
- e. Establish standard for determining whether quality of title acceptable. Possibilities:
 - i. Objective standard: marketable title, determined in accordance with OSBA Standards of Title Examination; and
 - ii. Subjective standard: buyer may object to any title exception within specified period after buyer receives both title insurance commitment and survey.
- f. If quality of title does not meet established standard, seller should have obligation (if objective title standard used) or option (if subjective title standard used) to attempt to cure title objections within specified period. If seller unable or unwilling to remove title objections within that period, buyer has option to either terminate contract or waive the objection. Should seller's inability to cure title objections give rise to claim for damages?

- g. Removal of standard exceptions (e.g., survey and mechanic's lien exceptions).
- h. Require seller to sign affidavit as to off-record title matters as required by title company.

2. Survey.

- a. Survey is desirable for a number of reasons: to identify the described real estate as the real estate intended to be purchased; to determine exact description of land; to show dimensions of an area within the subject land; to show location of easements and setback lines; to show location of improvements and the relation of improvements to property lines, setback lines, and easements; and to show access between property and dedicated street.
- b. Which party is responsible for furnishing and paying for survey? Negotiable.
- c. When is survey to be furnished? Within specified number of days after date of contract.
- d. Specify surveyor or which party is to select surveyor.
- e. Specify standards to which survey must conform. If buyer obtaining at buyer's cost, not so important; can simply provide for buyer to obtain survey meeting buyer's requirements. If seller obtaining or paying for survey, more important to specify survey standards in detail. Consider incorporating ALTA/NSPS (formerly ACSM) survey standards.
- f. Establish standard for determining whether survey and matters disclosed by survey are acceptable and seller's right to cure defects. Combine with provisions regarding title insurance discussed in § III.G.1.e. and f.

H. Other provisions facilitating buyer's due diligence.

1. Satisfying contingencies.

In attempting to satisfy contingencies and performing other due diligence, it is important for buyer to be furnished with various items of property information in seller's possession. Require seller to furnish such property information to buyer within specified period, including, as applicable:

- a. Current rent roll;
- b. Copies of leases;
- c. Copies of contracts relating to ownership and operation of property;
- d. Written inventory of personal property being sold;

- e. Copies of building plans and specifications;
- f. Any geotechnical, environmental or other engineering reports;
- g. Any environmental permits and documentation relating to such permits;
- h. Correspondence from governmental agencies regarding any alleged violation of any law applicable to property;
- i. Certificate of occupancy; and
- j. Operating statements for property.

2. Review information.

Authorize buyer to review seller's books and records relating to the property and to contact governmental authorities to obtain information about the property.

3. Inspect property.

Authorize buyer, at reasonable times and upon reasonable notice to seller, to inspect and test the property. Buyer should be obligated to inspect and test in a manner that will not damage property and to indemnify seller against liabilities and claims arising out of inspections or tests.

4. Failure to close.

As protection to seller, seller might require buyer to return all information furnished or obtained if contingencies not satisfied or if contract otherwise fails to close for reasons other than seller's default.

I. Provisions regarding leases.

- 1. Rent roll and copies of leases should be furnished at outset of contract (see § III.H.1.a. and b.).
- 2. Updated rent roll to be furnished at time of closing.
- 3. Seller should pay to buyer or credit against purchase price (i) prepaid rents, prorated through date of closing; and (ii) security deposits.
- 4. Address treatment of past due rents as of time of closing. Who is entitled to collect past due rents after closing? If seller not entitled to collect, what efforts must buyer exert to collect? If buyer receives rent payment from a delinquent tenant after closing, must that payment be applied to past due rent or may buyer apply first to current rent?
- 5. Seller indemnifies buyer against liabilities and claims arising under leases and relating to periods of time prior to closing. Buyer indemnifies seller against liabilities and claims arising under leases and relating to periods of time after closing.

6. Representations and warranties regarding leases:
 - a. Copies of leases furnished by seller to buyer are true and complete copies of all leases, including amendments;
 - b. Leases in full force and effect;
 - c. Rent roll true and complete and fairly and accurately summarizes status of leases;
 - d. No security deposits paid by tenants except as set forth in rent roll; and
 - e. Seller not in default under any leases.
7. If any lease is of particular importance to buyer, buyer should require estoppel certificate of tenant.

J. Provisions regarding other contracts.

There might be contracts, other than leases, relating to the ownership or operation of the property (such as management contracts, maintenance contracts, etc.) that run with the land or are assumable by buyer. These contracts should be addressed.

1. Copies of contracts relating to ownership or operation of property should be furnished at outset of contract (see § III.H.1.c., above).
2. Within specified time after seller furnishes contracts, buyer should notify seller as to which of the contracts buyer desires to assume. Buyer should not be obligated to assume any other contracts.
3. At closing, seller to assign and buyer to assume the assumable contracts previously specified by buyer; buyer to pay to seller any prepaid obligations under assumed contracts; and seller to pay to buyer or credit against purchase price accrued obligations under assumed contracts.
4. Seller indemnifies buyer against liabilities and claims (i) arising under assumed contracts and relating to periods of time prior to closing; and (ii) arising under contracts that are not assumed. Buyer indemnifies seller against liabilities and claims arising under assumed contracts and relating to periods of time after closing.
5. Representations and warranties regarding contracts:
 - a. Except as disclosed by seller, there are no contracts affecting the property that will bind the property after closing; and
 - b. All contracts assumed by buyer are in good standing and will be in good standing upon closing.
6. *If there is a contract to be assumed by buyer that is of particular importance to buyer, buyer should require estoppel certificate of other party to contract.*

K. Prorations.

1. Taxes and assessments.

a. Taxes.

- i. Delinquent taxes to be paid by seller or credited against purchase price.
- ii. Current taxes to be prorated as of closing date and paid by seller or credited against purchase price.
- iii. Actual amount of taxes to be prorated not generally known at time of closing. Contract should provide whether proration intended to be final or to be adjusted when actual taxes determined.

b. Assessments.

If assessment is payable in installments, contract should provide whether (i) entire assessment is to be credited against purchase price; or (ii) only the installments prorated through closing are to be credited against purchase price. Buyer prefers credit for entire assessment. Seller prefers credit for prorated installments.

2. Rents.

See § III.I.3. and 4.

3. Assumed contracts.

See § III.J.3.

4. Utility charges through closing to be paid by seller.

5. Interest on assumed mortgage.

6. Escrows held by lender under assumed mortgage.

L. Casualty and eminent domain.

Contracts typically contain lengthy provisions governing the parties' rights if, prior to closing, (i) the property is damaged by casualty; or (ii) all or a portion of the property is taken or threatened to be taken by government authority. These provisions cover eventualities that are very unlikely to occur, and it probably does not make sense to spend too much time negotiating them. The following suggested provisions seem to be reasonable and fair.

1. Casualty.

- a. Require seller to keep property insured in commercially reasonable amounts prior to closing.
- b. If damage can reasonably be restored prior to closing, seller to restore prior to closing.
- c. If damage cannot reasonably be restored prior to closing:
 - i. If cost to restore is below specified amount, insurance proceeds to be paid to buyer at closing, purchase price reduced by amount of insurance deductible, and closing to proceed; or
 - ii. If cost to restore is above specified amount, buyer has option to either (a) terminate contract; or (b) proceed with closing, in which event insurance proceeds to be paid to buyer at closing and purchase price to be reduced by amount of insurance deductible.

2. Eminent domain.

Seller to give buyer notice of commencement of negotiations or legal action for taking of any part of property. Buyer then has option (a) to terminate contract; or (b) to proceed with closing. If buyer proceeds with closing, purchase price reduced by any awards paid to seller prior to closing, and seller assigns to buyer right to any awards not yet paid as of closing.

M. Transfer documents.

Provide for the documents by which the subject property will be transferred by seller to buyer.

1. Deed for real estate.

- a. General warranty, limited warranty, or quit-claim deed.
- b. If deed is general or limited warranty deed, specify permitted exceptions to which conveyance may be subject.
- c. Deed to be transferable and recordable. If legal description not approved by county engineer, or if conveyance involves lot split that has not been approved, then deed would not be transferable.
- d. Specify who pays conveyance fee. Custom is for seller to pay, but might be negotiable.

2. Bill of sale for tangible personal property.

Specify any warranties to be given by seller in bill of sale. Seller will want to disclaim any implied warranties. Consider attaching form of bill of sale.

3. Assignment of leases.

- a. Include representations and warranties regarding leases (*see* Contract Provisions, § I.6.).
- b. Include indemnifications by seller and buyer described in Contract Provisions, § I.5.
- c. Buyer should sign to indicate agreement to assume leases.

4. Assignment of assumed contracts.

- a. Include appropriate representations and warranties regarding assumed contracts (*see* Contract Provisions, § J.5.).
- b. Include indemnifications by seller and buyer described in Contract Provisions, § J.4.
- c. Buyer should sign to indicate agreement to assume contracts.
- d. If assignment of contract requires consent of other party to contract, require that party's consent.

5. Assignments of any other items of intangible personal property (e.g., warranties, licenses, or trade names).

N. Closing.

- 1. Time.
- 2. Place.
- 3. Method—escrow or sit-down closing. If escrow closing, who pays fees of escrow agent?

O. Brokerage commissions.

- 1. Specify any brokerage commissions to be paid, and to whom.
- 2. Seller and buyer should each represent and warrant that they have not taken any actions that would give rise to a claim for any commission, except as specified.

P. Representations and warranties.

1. Often an area of substantial negotiation.

Buyer generally wants seller to make numerous representations and warranties, and seller wants to keep to a minimum. However, for a buyer, representations and warranties are not a substitute for thorough due diligence. Therefore, greatest value of representations and warranties to buyer is in eliciting facts about property.

2. Some typical representations and warranties.

- a. Property free and clear of all liens and encumbrances, other than “permitted exceptions.”
- b. No actions or claims affecting the property are pending or have been threatened.
- c. Seller has not granted to any person, other than tenants under permitted leases, any right to occupy property.
- d. No violations of zoning, building, fire, safety, or health codes.
- e. No knowledge of any public improvements to be made that would result in assessment against real estate.
- f. No knowledge of any threatened condemnation or eminent domain proceeding.
- g. Operating statements furnished by seller to buyer not misleading.
- h. No knowledge of latent defects in improvements.
- i. Property not in violation of any environmental laws.
- j. Property not contaminated by any hazardous substances.
- k. No asbestos in improvements.
- l. Representations and warranties regarding leases—see Contract Provisions, § I.6.
- m. Representations and warranties regarding contracts—see Contract Provisions, § J.5.
- n. Representations and warranties regarding assumed loan—see Contract Provisions, § D.2.c.iv.

3. Seller generally wants to couch representations and warranties as being to seller’s actual knowledge.

That might be appropriate for some representations and warranties, but not others. Buyer should negotiate this issue for each individual representation and warranty, rather than concede to a blanket qualification of all representations and warranties as being to seller’s actual knowledge.

4. Representations and warranties should be effective as of date of contract and as of date of closing.

5. Specify whether representations and warranties survive closing. As a compromise, the survival of representations and warranties is sometimes limited as to time.

Q. Management pending closing.

Specify responsibilities of seller in managing the property prior to closing. Seller's obligations might include:

1. To maintain property in substantially the same condition as of date of contract;
2. To manage property in responsible manner and in a manner consistent with management prior to contract;
3. To insure property in commercially reasonable amounts and with commercially reasonable deductible;
4. Not to cancel or amend any lease, or enter into any renewal or new lease without buyer's consent, except within parameters specified in contract;
5. Not to enter into any agreement that would encumber the property after closing without buyer's consent;
6. To advise buyer of any action or claim concerning the property; and
7. To continue to make the debt service payments on any loan to be assumed and to keep such loan in good standing.

R. Assignment rights.

Seller generally wants to prohibit assignment of contract by buyer. However, buyer might intend to form new entity prior to closing to take title, in which case buyer needs flexibility to make that assignment.

S. Duration of offer.

Contract often written as offer from one party to the other. If so, the offer should specify a date and time at which it will expire and method by which it can be accepted.

T. Like-kind exchange provision.

Either seller or buyer might want to structure transaction as part of a like-kind exchange under § 1031 of Internal Revenue Code. It is a good idea to include a provision obligating each party to cooperate with the other in accomplishing a like-kind exchange. See § 23 of sample Purchase and Sale Agreement.

Purchase and Sale Agreement

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made by ABC COMPANY, LLC, an Ohio limited liability company ("Seller"), and XYZ COMPANY, LLC, an Ohio limited liability company ("Buyer"). The "Effective Date" of this Agreement shall be determined as provided in Section 25.

In consideration of the mutual covenants and agreements set forth herein, Seller and Buyer hereby agree as follows:

1. Sale and Purchase. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on and subject to the terms and conditions herein set forth, the following:

(a) the land situated in the City of Anywhere, _____ County, Ohio, being more particularly described in Exhibit A hereto, together with the building and all other improvements, amenities and fixtures thereon and appurtenances thereto (the "Realty"), commonly known as 123 Main Street, Anywhere, Ohio;

(b) all tangible personal property of any kind attached to or used in connection with the ownership, management, maintenance or operation of the Realty and located at the Realty, but excluding personal property of tenants in possession (together with the Realty, collectively, the "Property");

(c) all of the landlord's interest in all leases for the use or occupancy of portions of the Property; and

(d) to the extent assignable, all of Seller's right, title and interest in and to all (i) contracts relating to the ownership, management, maintenance or operation of the Property that are assumed by Buyer pursuant to Section 8(a), (ii) warranties, guaranties, indemnities and claims relating to the Property, (iii) licenses, permits, certificates of occupancy and similar documents relating to the Property, (iv) plans, drawings, specifications, surveys, engineering reports, environmental reports and other technical information relating to the Property, and (v) utility reservations, commitments or allocations, if any, relating to the Property.

2. Purchase Price and Payment. The purchase price to be paid by Buyer to Seller shall be \$_____, and shall be paid by Buyer to Seller in immediately available funds upon the closing of the transaction contemplated by this Agreement (the "Closing").

3. Deposit. Within two business days after the Effective Date, Buyer shall deposit the sum of \$_____ (the "Initial Deposit") with _____ ("Broker"). Upon the satisfaction or waiver of all of the Contingencies (as defined in Section 4), Buyer shall deposit an additional sum of \$_____ (together with the Initial Deposit, the "Deposit") with Broker. If this Agreement is terminated by reason of the failure of any of the Contingencies, the Initial Deposit shall be returned by Broker to Buyer. Upon Closing, the Deposit shall be paid to Seller and applied against the purchase price. If Seller fails or refuses to perform Seller's obligations under this Agreement for any reason other than default by Buyer in the performance of Buyer's obligations, the Deposit shall be returned by Broker to Buyer, without prejudice to the rights of Buyer in any action for damages or specific performance. If this Agreement is terminated in accordance with the provisions relating to termination set forth herein, the Deposit shall be returned by Broker to Buyer. If Buyer fails or refuses to perform Buyer's obligations under this Agreement for any reason other than default by Seller in the performance of Seller's obligations, then, as Seller's sole and exclusive remedy, the Deposit shall be paid by Broker to Seller as liquidated damages.

4. Contingencies. The obligation of Buyer to close the transaction contemplated by this Agreement is contingent upon the satisfaction or waiver of all of the following contingencies (collectively, the “Contingencies,” and individually, a “Contingency”) within ____ days after the Effective Date (such ____ day period being called the “Contingency Period”):

(a) Buyer obtaining a commitment to finance the purchase of the Property on terms and conditions satisfactory to Buyer;

(b) Buyer determining, on the basis of such inspections and tests of the Property that Buyer chooses to perform and such documents and information as are furnished or made available to Buyer pursuant to Section 6 or otherwise obtained by Buyer, that all elements of the Property are in a condition satisfactory to Buyer, that the physical and environmental aspects of the Property are satisfactory to Buyer, that utility services of types and in amounts satisfactory to Buyer are available at the Property, that the Property is in compliance with all applicable governmental laws, rules and regulations, and that the Property is otherwise satisfactory to Buyer;

(c) Buyer determining that the Property and its intended use is not in violation of any zoning or land use laws or any other laws, rules or regulations of any governmental or quasi-governmental authority applicable to the ownership, use or operation of the Property;

(d) Buyer determining, on the basis of such documents and information as are furnished or made available to Buyer pursuant to Section 6 or otherwise obtained by Buyer, that the financial prospects for the ownership and operation of the Property are satisfactory to Buyer; and

(e) Buyer determining, on the basis of such documents and information as are furnished or made available to Buyer pursuant to Section 6 or otherwise obtained by Buyer, that the Leases (as defined in Section 6) are satisfactory to Buyer.

Buyer will proceed diligently and in good faith to attempt to obtain the satisfaction of the Contingencies, and will give Seller prompt written notice of the satisfaction, failure or waiver of the Contingencies. The determination of whether the Contingencies have been satisfied shall be within Buyer’s sole discretion exercised in good faith. From time to time at the request of Seller, Buyer shall advise Seller of the status of each of the Contingencies and of the status of Buyer’s efforts to satisfy each of the Contingencies. The first date on which Buyer has given Seller written notice of the satisfaction or waiver of all of the Contingencies is called the “Contingency Date.” If Buyer fails to give written notice to Seller of the satisfaction, failure or waiver of any Contingency by the expiration of the Contingency Period, then that Contingency shall be deemed to have been satisfied. Upon the failure of any Contingency, this Agreement shall be terminated, the Deposit shall be returned to Buyer, and the parties shall be released from their obligations hereunder, except for the indemnification obligations of Buyer under Section 14 and the confidentiality obligations of Buyer under Section 16. The satisfaction or waiver of the Contingencies shall not operate to release or excuse Seller from any of the representations, warranties or agreements made by Seller in this Agreement.

5. Title Insurance; Survey.

(a) Buyer shall obtain, not later than the Contingency Date, the following: (i) a title insurance commitment (the “Title Commitment”) issued by a title insurance company selected by Buyer (“Title Company”), in which Title Company shall commit that, upon delivery and recording of the deed provided for in Section 9 and satisfaction of Title Company’s requirements set forth

therein, it will issue its policy of owner's title insurance insuring in Buyer in the total amount of the purchase price fee simple title to the Realty; and (ii) a survey of the Realty prepared by a surveyor selected by Buyer (the "Survey") satisfying Buyer's survey requirements. At the request of Seller, Buyer will furnish to Seller a copy of the Title Commitment and the Survey obtained by Buyer. If any of the exceptions set forth in Schedule B of the Title Commitment or any matter disclosed by the Survey is unsatisfactory to Buyer, Buyer may object to such title exception or survey matter (any such title exception or survey matter to which Buyer objects being called a "Noted Exception") by written notice given to Seller not later than the Contingency Date. Seller may, within five business days after Buyer gives Seller such notice of objection to a Noted Exception (such five business day period being called the "Response Period"), give Buyer written notice that Seller will cure such Noted Exception at or prior to Closing, in which event Seller will cure such Noted Exception at or prior to Closing. If Seller does not, within the Response Period, give Buyer written notice that Seller will cure a Noted Exception to which Buyer has objected as provided above, Buyer may, by written notice given to Seller within five business days after expiration of the Response Period, terminate this Agreement by giving written notice to Seller, in which case the Deposit shall be returned to Buyer, and if Buyer does not so terminate this Agreement, Buyer will be deemed to have waived the objection to the Noted Exception and the transaction shall proceed without reduction in the purchase price. The title exceptions and survey matters to which Buyer does not object as provided above, together with any Noted Exceptions to which Buyer objects but subsequently waives the objection, are collectively called the "Permitted Exceptions;" provided that in no event shall any lien that may be satisfied by the payment of money, other than real estate taxes that are not yet due, be a Permitted Exception, and Seller shall be obligated to cause all such liens to be satisfied and released at or prior to Closing. The Leases will be Permitted Exceptions, whether or not exceptions therefor are set forth in Schedule B of the Title Commitment. Upon Closing, the title to the Realty conveyed by Seller to Buyer shall be such that Buyer shall be able to obtain an owner's policy of title insurance in accordance with the Title Commitment, insuring in Buyer in the total amount of the purchase price fee simple title to the Realty, subject only to the Permitted Exceptions and to any liens to which Buyer subjects the Realty at Closing.

(b) Upon Closing, Seller shall pay all premiums and other charges for the issuance of the Title Commitment and the title insurance policy, and Buyer shall pay all charges for the Survey. If the Closing does not occur for any reason other than a default by Seller in the performance of Seller's obligations under this Agreement, Buyer shall bear the costs related to the Title Commitment and the Survey.

6. Property Information. Within three business days after the Effective Date, Seller shall deliver to Buyer, to the extent Seller has not already done so, true and complete copies of the following: (a) all leases affecting the Property (the "Leases"), which Leases are identified in the rent roll attached hereto as Exhibit B; (b) all maintenance, service, security and utility contracts relating to the Property (the "Contracts"); (c) any title insurance policies or other evidence of title for the Realty in the possession or control of Seller; (d) any surveys of the Realty that are in the possession or control of Seller; (e) any blueprints, building plans and specifications, and other drawings or plans relating to the Property that are in the possession or control of Seller; (f) any notices or correspondence received by Seller from governmental authorities or other third parties within the past three years regarding any violation or alleged violation of any law applicable to the Property; (g) any permits or licenses relating to the ownership or operation of

the Property that are in the possession or control of Seller; and (h) income and expense statements regarding the results of operation of the Property for 20____, 20____, and 20____ to date. Seller will furnish such additional documents and information regarding the Property as are reasonably requested by Buyer from time to time prior to Closing and in the possession or control of Seller. Seller authorizes Buyer and Buyer's agents to contact governmental authorities and other third parties to obtain information about the Property.

7. Leases.

(a) Seller shall use diligent and good faith efforts to cause each tenant under the Leases (the tenants under the Leases being called, individually, a "Tenant," and, collectively, the "Tenants") to execute and deliver to Buyer and Buyer's lender, as soon as practical after the Contingency Date and in any event at or prior to Closing, (i) an estoppel certificate (a "Tenant Estoppel Certificate") and (ii) if required by Buyer's lender, a Subordination, Non-Disturbance and Attornment Agreement (an "SNDA Agreement"). Each Tenant Estoppel Certificate shall be in the form of Exhibit C hereto or in such other form as may be required by Buyer's lender, with only such changes as may be requested by a Tenant and approved by Buyer and Buyer's lender. Each SNDA Agreement (if required by Buyer's lender) shall be in the form required by Buyer's lender, with only such changes as may be requested by Tenant and approved by Buyer and Buyer's lender. If, as of the outside date for Closing, Seller has not caused each Tenant to execute and deliver to Buyer and Buyer's lender such a Tenant Estoppel Certificate and SNDA Agreement, then Buyer may terminate this Agreement and the Deposit shall be returned to Buyer; provided that Buyer may not terminate this Agreement by reason of the failure of a Tenant to execute and deliver an SNDA Agreement if Buyer's lender waives the requirement for an SNDA Agreement from such Tenant. Promptly upon obtaining any Tenant Estoppel Certificate or SNDA Agreement from a Tenant, Seller will furnish a copy of the same to Buyer. From time to time at the request of Buyer after the Contingency Date, Seller shall advise Buyer of the status of Seller's efforts to obtain the Tenant Estoppel Certificates and SNDA Agreements. Buyer may communicate with the Tenants to obtain and/or confirm information regarding the Leases, the Tenants and the Property.

(b) At Closing, Seller shall assign the Leases to Buyer, and Buyer shall assume the Leases, by an Assignment and Assumption of Leases in the form of Exhibit D hereto, Seller shall deliver originals of the Leases to Buyer, and Seller shall cooperate with Buyer in notifying the Tenants to pay future rents to Buyer. Seller shall pay to Buyer or credit against the purchase price any outstanding security deposits and any prepaid rents under any of the Leases, prorated to the date of Closing. Seller shall retain title to all past due rents under the Leases existing as of Closing, and shall have the right to collect such past due rents at Seller's expense. Buyer shall promptly remit to Seller all such past due rents collected by Buyer after Closing; provided that rents collected by Buyer after Closing shall be applied first to the rents becoming due and payable on and after the date of Closing. Seller shall indemnify and hold Buyer harmless from any and all liabilities and claims, and costs and expenses in connection therewith, arising from the Leases and relating to periods of time prior to Closing, and Buyer shall indemnify and hold Seller harmless from any and all liabilities and claims, and costs and expenses in connection therewith, arising from the Leases and relating to periods of time after Closing.

8. Contracts. Not more than ten business days after the Contingency Date, Buyer shall give written notice to Seller identifying the Contracts, if any, that Buyer desires to assume (the Contracts that Buyer so elects to assume being called the "Assumed Contracts," and the other Contracts being called the "Refused Contracts"). If Buyer does not give such written notice to

Seller within the time provided above, then Buyer shall be deemed to have elected to assume none of the Contracts, and none of the Contracts shall be Assumed Contracts. At Closing, Seller shall assign the Assumed Contracts to Buyer, and Buyer shall assume the Assumed Contracts, by an Assignment and Assumption of Contracts in the form of Exhibit E hereto, Seller shall deliver to Buyer originals of the Assumed Contracts, Buyer shall pay to Seller the amount of any prepaid obligations under the Assumed Contracts, and Buyer shall be entitled to a credit against the purchase price in the amount of any accrued obligations under the Assumed Contracts. In addition, at Closing, Seller shall give notice of termination of Refused Contracts to the other parties thereto in order that each of the Refused Contracts shall terminate at the earliest time after the notice of termination, not to exceed 30 days, permitted thereunder. Buyer shall not be obligated to assume any of the Contracts other than the Assumed Contracts; provided that Buyer shall be responsible for the obligations accruing under the Refused Contracts during the period after Closing, not to exceed 30 days, until the termination of the Refused Contracts becomes effective. Seller shall indemnify and hold Buyer harmless from any and all liabilities and claims, and costs and expenses in connection therewith, arising under the Contracts and relating to periods of time prior to Closing, and Buyer shall indemnify and hold Seller harmless from any and all liabilities and claims, and costs and expenses in connection therewith, arising under (i) the Assumed Contracts and relating to periods of time after Closing and (ii) the Refused Contracts and relating to the period after Closing, not to exceed 30 days, until the termination of the Refused Contracts becomes effective.

9. Deed. Seller shall convey the Realty to Buyer by transferable and recordable limited warranty deed in statutory form, free and clear of all liens, encumbrances and other exceptions to title except Permitted Exceptions. Seller shall pay all transfer and conveyance taxes and fees in connection with the conveyance of the Realty. Any easements and other rights benefiting the Realty shall be conveyed to Buyer by appropriate instrument.

10. Taxes and Assessments. Seller shall pay or credit on the purchase price any of the following that are a lien on the Property on the date of Closing: all delinquent real estate taxes, including penalty and interest, all assessments, all unpaid real estate taxes not yet due for years prior to Closing and a portion of such taxes for the year of Closing, prorated through the date of Closing. The proration of such taxes shall be based on a 365-day year and on the most recently available tax rate and valuation; provided that when tax bills with respect to such prorated taxes are received after Closing, such taxes will then be re-prorated on the basis of the actual taxes and cash settlement made between Seller and Buyer.

11. Utilities. All utility charges and all charges for services of any type furnished to the Property by any governmental agencies, public utilities or private utilities through the date of Closing shall be paid by Seller.

12. Damage or Destruction. Prior to Closing, Seller shall, at its expense, insure the Property, in commercially reasonable amounts and with a commercially reasonable deductible, against fire and such other insurable casualties as are commonly insured against. Seller shall promptly notify Buyer of any material damage occurring to the Property prior to Closing. If, prior to Closing, any portion of the Property is damaged or destroyed and the Property can reasonably be restored by Closing, Seller shall promptly restore the Property prior to Closing, subject to force majeure, and the Closing shall occur in accordance with this Agreement at or after the completion of restoration. If, prior to Closing, any portion of the Property is damaged or destroyed, the Property cannot reasonably be restored by Closing and the estimated cost of restoration is not more than \$_____, all insurance proceeds payable with respect to the loss

(after deduction of any amounts paid to Seller's mortgagee(s)) shall be assigned to Buyer at Closing, to the extent not theretofore applied to restoration, the purchase price shall be reduced by the amount of the insurance deductible and amounts paid to Seller's mortgagee(s), and the transaction contemplated by this Agreement shall be closed. If, prior to Closing, any portion of the Property is damaged or destroyed, the Property cannot reasonably be restored by Closing and the estimated cost of restoration is more than \$_____, Buyer may, at its option exercisable by notice given to Seller within 15 days after Buyer receives notice of the damage or destruction (but not later than the outside date for Closing), terminate this Agreement, in which event both parties shall be released from all further obligations hereunder and the Deposit shall be returned to Buyer; and if Buyer does not so terminate this Agreement, all insurance proceeds payable with respect to the loss (after deduction of any amounts paid to Seller's mortgagee(s)) shall be assigned to Buyer at Closing, to the extent not theretofore applied to restoration, the purchase price shall be reduced by the amount of the insurance deductible and amounts paid to Seller's mortgagee(s), and the transaction contemplated by this Agreement shall be closed.

13. Eminent Domain. If, prior to Closing, any authority having the right of eminent domain shall commence negotiations with Seller or shall commence legal action against Seller for the damaging, taking or acquiring of all or any part of the Property, either temporarily or permanently, in any condemnation proceeding or by exercise of the right of eminent domain, Seller shall immediately give notice of the same to Buyer. Upon the occurrence of any of the foregoing events, Buyer shall have the right, at its option, to terminate this Agreement within 15 days after Buyer receives such notice from Seller (but not later than the outside date for Closing) by giving written notice thereof to Seller, in which event the parties shall be released from all further obligations hereunder and the Deposit shall be returned to Buyer. If Buyer does not so terminate this Agreement, the purchase price shall be reduced by the total of any awards, settlement proceeds or other proceeds received by Seller at or prior to Closing with respect to any damaging, taking or acquiring. If, at the time of Closing, no proceeds have been received, Seller shall assign to Buyer all of Seller's rights in and to any awards, settlement proceeds or other proceeds payable by reason of any such damaging, taking or acquiring, but the purchase price shall remain the same.

14. Occupancy and Testing of Property. Seller grants to Buyer and persons designated by Buyer the right and permission at reasonable times prior to Closing and upon reasonable notice to Seller to enter upon the Property to inspect the Property and conduct such tests with respect to the Property that Buyer chooses to conduct; provided that (a) such inspections and tests shall be so conducted as not to materially damage the Property, (b) such inspections and tests shall be conducted at Buyer's cost and expense, (c) Buyer shall indemnify and hold Seller harmless from and against any liabilities or claims for damage to persons or property, and costs and expenses in connection therewith, caused by such inspections and tests, (d) Buyer's right to conduct such inspections and tests shall be subject to the rights of Tenants, and (e) Buyer shall conduct such inspections and tests, and shall coordinate the same through Seller, in a manner reasonably calculated to maintain confidentiality as provided in Section 16.

15. Closing. The Closing shall occur on such date and at such time and place in _____ County, Ohio as to which Seller and Buyer shall agree, but not later than 30 days after the Contingency Date. At the option of either Seller or Buyer, the Closing shall take place in escrow through Title Company, in which event the escrow fees, if any, shall be borne equally by Seller and Buyer. The transaction shall be closed by Buyer paying to Seller the purchase price as

provided in Section 2, by Seller executing and delivering to Buyer the deed provided for in Section 9 and a certificate meeting the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, by Seller and Buyer executing and delivering the Assignment and Assumption of Leases provided for in Section 7(b) and the Assignment and Assumption of Contracts provided for in Section 8(c), by Seller furnishing to Buyer and Buyer's lender originals of all of the Tenant Estoppel Certificates and SNDA Agreements that Seller obtained from the Tenants as provided for in Section 7(a), by Seller giving notice of termination of the Refused Contracts as provided in Section 8(c), by Seller executing and delivering to Title Company such title affidavits as Title Company may reasonably require as a condition to issuing the title insurance policy, and by Seller and Buyer executing and/or delivering to each other and/or to the Title Company any other documents contemplated by or provided for in this Agreement or reasonably appropriate to the transaction and any other documents as the Title Company may reasonably require as a condition to issuing the title insurance policy. Possession of the Property shall be given to Buyer upon Closing, subject to the rights of the Tenants under the Leases and any other Permitted Exceptions. If prorations at Closing are made based on estimates, or are not made because of the unavailability of actual figures, then, when the actual amounts are determined after Closing, the parties shall adjust the prorations and, if necessary, refund or repay such sums as are necessary to effect such adjustment so that all income and expenses are prorated as of Closing. This provision regarding adjustment of prorations shall survive the Closing.

16. Confidentiality. Buyer will (a) not disclose this Agreement or the transaction contemplated by this Agreement to any third parties until after the Closing, (b) pursue this Agreement in a manner reasonably calculated to preserve confidentiality, and (c) take all reasonable steps to preserve the confidentiality of this Agreement and the transaction contemplated by this Agreement. However, notwithstanding the provisions of the immediately preceding sentence to the contrary, Buyer may disclose this Agreement and the transaction contemplated by this Agreement to: (i) prospective tenants, prospective lenders, Buyer's partners, Buyer's attorneys, accountants and other advisers and consultants, and to Buyer's employees and agents with a need to know, provided that at the time of making such disclosure to any such third party, Buyer advises the third party of this confidentiality provision and that such third party is bound by this confidentiality provision; and (ii) to governmental and quasi-governmental authorities with jurisdiction over the Property in connection with inquiries regarding the compliance of the Property with applicable laws, rules and regulations.

17. Brokers. Seller has engaged Broker in connection with the purchase and sale of the Property. Upon Closing, Broker shall have earned a commission as agreed separately between Seller and Broker, which commission shall be paid by Seller. Seller and Buyer each represent to the other that it has not enlisted the services of a broker or other agent in connection with the purchase and sale of the Property, other than Broker, nor have they taken any actions that could give rise to a claim for a commission in connection with the transaction, other than to Broker as provided above. Each party agrees to indemnify the other party against, and to hold the other party harmless from, any and all losses, costs, damages, liabilities and expenses resulting from a breach by the indemnifying party of the foregoing representation. Such indemnifications shall survive the Closing.

18. Representations and Warranties. Seller represents and warrants to Buyer that:

(a) Seller has not received any written notice of any unresolved or unsettled claims, lawsuits, actions or other proceedings or administrative hearings (including, without limitation, proceedings for or involving condemnation, eminent domain, building, fire, safety or health

code or zoning violations, real estate tax valuations, revaluations or reviews, environmental matters, personal injury or property damage), and, to the best of Seller's knowledge, none of the foregoing has been threatened, whether involving a governmental entity or private party, that affect or may reasonably be expected to affect the Property or in which Seller is a party by reason of ownership of the Property or any part thereof;

(b) except for the Permitted Exceptions, the Leases and the Assumed Contracts, Seller is not a party to any contracts or agreements affecting the Property that will bind the Property or Buyer after Closing (except for the obligations accruing under the Rejected Contracts during the period after Closing, not to exceed 30 days, until the termination of the Refused Contracts becomes effective);

(c) Seller has not granted to any person or entity, other than the Tenants, any presently effective right or option to occupy the Property or any portion thereof;

(d) Seller has not received written notice of any violation of applicable zoning, building, fire, safety, health or environmental laws, rules or regulations with respect to the Property;

(e) true and complete copies of the Leases, including any amendments thereto, have been or will be furnished by Seller to Buyer pursuant to Section 6; the Leases are in full force and effect; the Leases are accurately identified in Exhibit B hereto; no security deposits have been paid by the Tenants except as provided for in the Leases; no rent has been paid more than one month in advance under any of the Leases; no rent abatement or other thing of value has been given to any Tenant other than as set forth in the Leases; to the best knowledge of Seller, none of the Tenants are in material default in the performance of their respective obligations under the Leases; to the best knowledge of Seller, Seller is not in default in the performance of Seller's obligations under the Leases; and no brokerage commissions are owing by Seller in connection with any of the Leases; and

(f) the unaudited income and expense statements for 20____, 20____, and 20____ to date that will be furnished by Seller to Buyer have been compiled by Seller in good faith and have been utilized in determining Seller's state and federal income tax returns; and Seller has not intentionally or fraudulently revised such statements so as to be misleading to Buyer.

The foregoing representations and warranties shall be true as of Closing and shall survive Closing for a period of one year; provided that with respect to any Lease as to which a Tenant Estoppel Certificate is not furnished by the applicable Tenant, the representation and warranty set forth in Section 18(e) shall survive without limitation. Buyer may, but shall not be required to, take any reasonably appropriate steps to confirm the accuracy of the foregoing representations and warranties, and Seller will execute prior to Closing any request for information that Buyer reasonably requests in connection with any search or confirmation of the accuracy of the foregoing representations and warranties. The obligation of Buyer to consummate this transaction is expressly subject to and conditioned upon the foregoing representations and warranties being true as of Closing, and Buyer shall confirm the same upon Closing.

19. "As-is" Sale. Buyer acknowledges that Buyer is relying solely upon its own inspections with regard to the condition of the Property, and that Buyer is purchasing the Property "as is," without any representation or warranty by Seller whatsoever, whether express or implied, as to the condition of the Property, or as to its fitness for any particular purpose, all of which are expressly disclaimed by Seller. In addition, Buyer specifically affirms that, as a result of the

above provisions of this Section, and without limiting the generality of such provisions, Buyer's purchase of the Property is made without any representation or warranty by Seller as to the environmental condition of the Property. The above provisions of this Section are subject to any express representations and warranties set forth in this Agreement. In the event that Seller furnishes to Buyer copies of any environmental or other reports regarding the condition of the Property, Seller shall not be deemed to have made any representations or warranties regarding the completeness, accuracy or quality of such reports or the competence of the preparer of such reports, Seller shall have no obligations to Buyer with respect to such reports, and Buyer shall have no right to rely on such reports.

20. Management Pending Closing. Until the date of Closing, Seller shall: (a) maintain the Property in substantially the same condition as it is in as of the date of this Agreement (subject to Section 12); (b) manage the Property in a commercially reasonable manner and in a manner consistent with Seller's management of the Property prior to the date of this Agreement; (c) continue the Leases, Assumed Contracts and insurance policies relative to the Property in full force and effect and neither cancel, amend nor renew any of the same or enter into any new lease without Buyer's prior written consent; (d) not, without the prior written consent of Buyer, enter into any agreement or take any action that would encumber the Property after Closing, that would bind Buyer or the Property after Closing, or that would be outside the normal scope of maintaining and operating the Property; and (e) within two business days after Seller receives notice thereof, advise Buyer of any litigation, arbitration or administrative proceeding concerning or affecting the Property. Upon Closing, the Property shall be in substantially the same condition as on the date of this Agreement, subject to the provisions of Sections 12 and 13.

21. Notices. Any notice required or intended to be given under the terms of this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given, delivered or served upon the earliest of (i) three days following deposit in the U.S. Mail, with proper postage prepaid, certified or registered, with return receipt requested, or (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) receipt of notice given by telecopy or personal delivery:

If to Seller: _____

Telecopy: _____

If to Buyer: _____

Telecopy: _____

22. Assignment. Buyer may not assign Buyer's rights or obligations under this Agreement other than (a) to an entity controlling, controlled by or under common control with Buyer, or (b) to a qualified intermediary in connection with an Exchange (as defined in Section 23). Buyer will not be released from its obligations under this Agreement by reason of any assignment by Buyer. Subject to the foregoing provisions of this Section, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and assigns.

23. Like-Kind Exchange. Seller and Buyer shall cooperate fully with the other in order to facilitate Buyer's or Seller's desire to structure the purchase of the Property as part of a so-called like-kind exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, if Buyer or Seller elects to effect an Exchange; provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange, nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller's or Buyer's obligations under this Agreement; (b) the Exchange shall not affect or diminish Buyer's or Seller's rights under this Agreement; (c) neither Seller nor Buyer shall be required to acquire or hold title to any real property for purposes of consummating the Exchange (Buyer or Seller may use a qualified intermediary to acquire or hold title); and (d) with respect to any Exchange, the non-exchanging party shall not incur any out-of-pocket expense in facilitating the Exchange for the exchanging party (other than for review of documents related to the Exchange). Neither Seller nor Buyer make representations or guarantees to the other that the transaction contemplated under this provision will result in any particular tax treatment or will qualify as an exchange under Section 1031 of the Internal Revenue Code.

24. Miscellaneous. The covenants, agreements, representations and warranties of Seller and Buyer under this Agreement shall not survive Closing, except as otherwise expressly provided herein.

If the day by which any action is to be taken, any notice is to be given or any document or information is to be furnished pursuant to this Agreement is not a business day, then the time for the taking of such action, giving of such notice or furnishing of such document or information shall be automatically extended to the next subsequent business day. As used herein, "business day" shall mean any day other than a Saturday, Sunday or legal holiday.

The headings to the Sections of this Agreement have been inserted for convenience only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

The submission of this Agreement by one party to the other does not constitute an offer by the submitting party unless such party has executed this Agreement.

Words of any gender used in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, where the sense requires.

This Agreement constitutes the entire agreement between the parties hereto and supercedes all prior negotiations regarding the subject matter hereof. This Agreement may not be modified except by an instrument in writing executed by the parties hereto.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original document.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

25. Acceptance and Effective Date. If this Agreement is not signed simultaneously by both parties, it shall be considered to be an offer made by the party first executing it to the other party. In such event, the party to whom the offer has been made may accept the offer by executing and delivering this Agreement to the offeror prior to the earlier of (a) the expiration of the offer (if the offeror has stated a time for expiration of the offer) or (b) revocation of the offer, but in no event may an offer be accepted more than three days after the date of the offer unless the offeror specifically consents thereto. The "Effective Date" of this Agreement shall be _____, 20____; provided that if a date has not been inserted in the blank in this sentence and agreed to by the parties, the "Effective Date" of this Agreement shall be (i) the date on which both parties execute this Agreement, if the parties execute this Agreement on the same date, or (ii) if the parties do not execute this Agreement on the same date, the date on which the second party executes this Agreement, thereby accepting the offer made by the first party executing this Agreement.

Buyer has executed this Agreement on the ____ day of _____, 20____.

XYZ COMPANY, LLC

By: _____

Name: _____

Title: _____

Seller has executed this Agreement on the ____ day of _____, 20____.

ABC COMPANY, LLC

By: _____

Name: _____

Title: _____

Broker hereby acknowledges receipt of the Deposit and agrees to apply the Deposit in accordance with Section 3 of the Agreement.

[BROKER]

By: _____

Name: _____

Title: _____

EXHIBIT A – Legal Description

EXHIBIT B – Leases

EXHIBIT C – Form of Tenant Estoppel Certificate

EXHIBIT D – Form of Assignment and Assumption of Leases

EXHIBIT E – Form of Assignment and Assumption of Contracts

Tenant Estoppel Certificate

RE: Lease dated _____ (the "Lease") between ABC Company, LLC ("Landlord") and _____ ("Tenant") for space (the "Premises") in the building located at 123 Main Street, Anywhere, Ohio (the "Building")

Tenant understands that Landlord is selling its interest in the Building to XYZ Company, LLC or its assigns ("Buyer"), and that in connection therewith the Lease will be assigned to Buyer. Tenant hereby certifies to and for the benefit of Landlord, Buyer, Choice Bank, N.A. and any other lender now or hereafter providing acquisition or other financing to Buyer related to the Building (a "Lender") that the following information with respect to the Lease is true and correct and may be relied upon by Landlord, Buyer and any Lender.

1. The Lease has not been assigned, amended or modified in any way, nor has the Premises been sublet in whole or in part, except as follows: _____.

2. A true and complete copy of the Lease, including, if any, all amendments and modifications, is attached hereto as Exhibit A.

3. The Lease is presently in full force and effect according to its terms and is the valid and binding obligation of Tenant.

4. The original term of the Lease commenced on _____, _____ and will expire on _____, _____, with no right of Tenant to extend except as follows: _____.

5. To the best of Tenant's knowledge, neither Tenant nor Landlord is in default under the Lease nor does any state of facts exist which with the passage of time or the giving of notice, or both, could constitute a default under the Lease.

6. All conditions under the Lease to be satisfied by Landlord as of the date hereof have been satisfied, and all contributions, if any, required to be paid by Landlord under the Lease to date for improvements to the Premises have been paid.

7. As of this date, to the best of Tenant's knowledge, there are no existing defenses or off-sets which Tenant has against the enforcement of the Lease by Landlord.

8. No rent has been paid by Tenant under the Lease more than one (1) month in advance of the due date.

9. Tenant has not paid any security deposit under the Lease except for a security deposit in the amount of \$_____ as provided for in the Lease.

10. The annual base rent under the Lease is \$_____ and the current monthly installments of additional rent are in the amount of \$_____.

DATED as of _____, 20____.

[TENANT]

By: _____

Name: _____

Title: _____

Assignment and Assumption of Leases

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (the "Assignment") is entered into as of the ____ day of _____, 20____, by ABC COMPANY, LLC, an Ohio limited partnership ("Assignor"), and XYZ COMPANY, LLC, an Ohio limited liability company ("Assignee").

Contemporaneously herewith, Assignor is conveying to Assignee the land and building located at and commonly known as 123 Main Street, Anywhere, Ohio (the "Property"). The Property is subject to the leases set forth in the rent roll (the "Rent Roll") which is attached hereto as Exhibit A (such leases being collectively called the "Leases").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to the Leases, and Assignee hereby accepts such assignment and assumes the obligations of Assignor accruing under the Leases on and after the date of this Assignment.

Assignor shall indemnify and hold Assignee harmless from any and all liabilities and claims arising from the Leases and relating to the period of time prior to the date of this Assignment. Assignee shall indemnify and hold Assignor harmless from any and all liabilities and claims arising from the Leases and relating to period of time on and after the date of this Assignment.

Assignor and Assignee have executed this Assignment as of the date first set forth above.

ABC COMPANY, LLC

By: _____

Name: _____

Title: _____

XYZ COMPANY, LLC

By: _____

Name: _____

Title: _____

Assignment and Assumption of Contracts

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (the "Assignment") is entered into as of the ____ day of _____, 20____, by ABC COMPANY, LLC, an Ohio limited liability company ("Assignor"), and XYZ COMPANY, LLC, an Ohio limited liability company ("Assignee").

Contemporaneously herewith, Assignor is conveying to Assignee the land and buildings located at and commonly known as 123 Main Street, Anywhere, Ohio (the "Property"). Assignor has entered into the contracts set forth in Exhibit A hereto (the "Contracts") in connection with Assignor's ownership and operation of the Property.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to the Contracts, and Assignee hereby accepts such assignment and assumes the obligations of Assignor accruing under the Contracts on and after the date of this Assignment.

Assignor shall indemnify and hold Assignee harmless from any and all liabilities and claims arising from the Contracts and relating to the period of time prior to the date of this Assignment. Assignee shall indemnify and hold Assignor harmless from any and all liabilities and claims arising from the Contracts and relating to period of time on and after the date of this Assignment.

Assignor and Assignee have executed this Assignment as of the date first set forth above.

ABC COMPANY, LLC

By: _____

Name: _____

Title: _____

XYZ COMPANY, LLC

By: _____

Name: _____

Title: _____

[Sample Letter of Intent]

_____, 20____

ABC Company, LLC

Re: 123 Main Street, Anywhere, Ohio (the "Property")

Ladies and Gentlemen

This letter sets forth the intention of XYZ Company, LLC ("Buyer") to negotiate an agreement (a "Purchase and Sale Agreement") to purchase the Property from ABC Company, LLC ("Seller") on the following basic terms:

1. Purchase Price. \$_____.

2. Contingencies. Buyer will have a ____-day period (the "Contingency Period") to begin upon the effective date of the Purchase and Sale Agreement to evaluate, at its sole discretion, the Property for environmental concerns, operating expenses, title exceptions or encumbrances, zoning issues, market factors and appraised values. At any time within the Contingency Period that Buyer has not notified Seller in writing of the satisfaction or waiver of all of the contingencies, Buyer may terminate the Purchase and Sale Agreement by written notice to Seller.

3. Closing. Closing shall occur within thirty (30) days after satisfaction or waiver of all of the contingencies.

4. Access. Until and unless a Purchase and Sale Agreement is entered into by Seller and Buyer, Buyer shall not be entitled to access to the Property, without Seller's prior consent. From and after the effective date of a Purchase and Sale Agreement, Buyer shall be entitled to access to the Property in accordance with its terms.

5. Brokers. Neither Seller nor Buyer has dealt with any broker or other commissionable agent in connection with this transaction, other than _____. Upon closing, Seller shall pay a commission to _____ in accordance with a separate agreement between Seller and _____.

6. Closing Costs and Prorations. Seller shall pay for title insurance costs, transfer and conveyance fees and taxes and costs customarily paid by sellers of similar properties in the area of the Property. Buyer shall pay for survey costs, recording costs and costs customarily paid by purchasers of similar properties in the area of the Property. Real estate taxes, operating expenses and income shall be prorated as of the date of closing.

7. Exclusive Negotiation Period. In consideration of Buyer's agreement to negotiate in good faith to enter into a Purchase and Sale Agreement, Seller agrees that it will not sell, contract to sell or enter into discussions or negotiations for the sale of the Property during the period from the date of this letter until the earlier of (a) _____, 20____ (the period from the date of this letter through _____, 20____ being called the "Negotiation Period") or (b) the effective date of a Purchase and Sale Agreement. Seller may market the Property to third parties during the pendency of a Purchase and Sale Agreement, provided that the right of any third party to purchase the Property shall be subject and subordinate to the rights of Buyer under the Purchase and Sale Agreement.

8. Confidentiality. Seller and Buyer shall maintain the confidentiality of the transaction contemplated by this letter. Buyer shall maintain the confidentiality of the information furnished by Seller to Buyer, or otherwise obtained by Buyer, regarding the Property, other than information that is generally available to the public.

9. Purchase and Sale Agreement. The parties shall attempt in good faith to negotiate and enter into a Purchase and Sale Agreement by the end of the Negotiation Period. At such time, if any, that the parties enter into a Purchase and Sale Agreement, this letter shall be merged into the Purchase and Sale Agreement and shall be of no further force or effect. Upon the expiration of the Negotiation Period without the parties having entered into the Purchase and Sale Agreement, this letter shall be of no further force or effect; provided, however, that the provisions of paragraph 8 shall survive expiration of the Negotiation Period.

This letter is intended to set forth basic terms under which Buyer has an interest in purchasing, and Seller has an interest in selling, the Property. Neither the execution and delivery of this letter by Buyer, nor the acceptance of this letter by Seller, shall create any binding obligation on either party hereto, except that, by acceptance of this letter, the parties agreed to be bound by the provisions of paragraphs 7 and 8.

XYZ COMPANY, LLC

By: _____

Name: _____

Title: _____

ACCEPTED:

ABC COMPANY, LLC

By: _____

Name: _____

Title: _____

[Sample Confidentiality Agreement]

_____, 20____

XYZ COMPANY, LLC

Ladies and Gentlemen:

ABC Company, LLC ("Owner") owns the office property located at and commonly known as 123 Main Street, Anywhere, Ohio (the "Property"). XYZ Company, LLC ("Buyer") has indicated an interest in purchasing the Property, and has requested information about the Property to evaluate the possible purchase of the Property (the "Property Information"). As a condition of furnishing the Property Information to Buyer, Owner requires that Buyer enter into this letter agreement for the benefit of Owner.

Buyer acknowledges that the Property Information constitutes confidential information of Owner, and agrees to keep the Property Information completely confidential; provided that Buyer may disclose the Property Information to Buyer's principals, employees, agents, attorneys, accountants, consultants and engineers in connection with Buyer's proposed purchase of the Property (collectively, "Buyer Representatives"), so long as Buyer (a) gives written notice to Owner identifying such Buyer Representatives (which written notice need only state the names of firms in the case of Buyer Representatives that are outside attorneys, accountants, consultants or engineers), and (b) informs such Buyer Representatives of the confidential nature of the Property Information and directs such Buyer Representatives, and such Buyer Representatives expressly agree, to treat the Property Information confidentially in accordance with this letter agreement. Further, Buyer agrees that, except to the extent provided otherwise in a binding agreement for the purchase of the Property, Buyer will, at the request of Owner, return to Owner the Property Information provided by Owner and cause any Buyer Representatives to return to Owner any Property Information in their possession.

This letter agreement shall be fully effective whether or not Owner and Buyer enter into a purchase and sale transaction with respect to the Property.

Buyer may accept this letter agreement by signing this letter in the spaces provided below and returning the signed letter.

ABC COMPANY LLC

By: _____

Name: _____

Title: _____

Accepted and agreed to:

XYZ COMPANY, LLC

By: _____

Name: _____

Title: _____

Seller's Closing Checklist

Sale of 123 Main Street, Anywhere, Ohio, by
ABC Company, LLC to XYZ Company, LLC

1. Limited warranty deed.
2. Assignment and assumption of leases.
3. Assignment and assumption of contracts.
4. Certificate updating representations and warranties.
5. Non-foreign certificate.
6. Closing affidavit.
7. Tenant estoppel certificates.
8. Subordination, non-disturbance, and attornment agreements.
9. Notice to tenants.
10. Termination of rejected service contracts.
11. Payoff letter—existing mortgage loan.
12. Closing statement.
13. Letter of escrow instructions.
14. Organizational/authorizing documents for ABC Company, LLC.
 - a. Articles of organization.
 - b. Certificate of existence.
 - c. Operating agreement.
 - d. Authorizing resolution.
15. *Get cash.*

Buyer's Closing Checklist

Purchase of 123 Main Street, Anywhere, Ohio, by
XYZ Company, LLC from ABC Company, LLC

A. *Purchase transaction.*

1. Documents.

- a. Limited warranty deed.
- b. Conveyance fee statement.
- c. Assignment and assumption of leases.
- d. Assignment and assumption of contracts.
- e. Certificate updating representations and warranties.
- f. Non-foreign certificate.
- g. Closing affidavit.
- h. Tenant estoppel certificates.
- i. Notice to tenants.
- j. Termination of rejected service contracts.
- k. Payoff letter—existing mortgage loan.
- l. Closing statement.
- m. Letter of escrow instructions.
- n. Organizational/authorizing documents for ABC Company, LLC.
 - i. Articles of organization.
 - ii. Certificate of existence.
 - iii. Operating agreement.
 - iv. Authorizing resolution.

2. Due diligence.

- a. Title insurance commitment.
- b. Insured closing letter.
- c. Survey.
- d. UCC search.
- e. Environmental report.
- f. Property condition report.
- g. Insurance coverages.

- h. Zoning/land use review.
- i. Review of leases.

B. *Financing.*

1. Documents.

- a. Loan agreement.
- b. Promissory note.
- c. Mortgage.
- d. Assignment of rents.
- e. Guaranty.
- f. Environmental indemnity agreement.
- g. UCC financing statement.

2. Due diligence.

- a. Appraisal.
- b. Environmental report.
- c. Property condition report.
- d. Evidence of insurance coverages.
- e. Title insurance commitment.
- f. Insured closing letter.
- g. Survey.
- h. UCC search.
- i. Rent roll.
- j. Copies of leases.
- k. Tenant estoppel certificates.
- l. Subordination, non-disturbance, and attornment agreements.
- m. Organizational/authorizing documents for ABC Company, LLC.
 - i. Articles of organization.
 - ii. Operating agreement.
 - iii. Certificate of existence.
 - iv. Authorizing resolution.
- n. Organizational/authorizing documents for XYZ Company, LLC.
 - i. Articles of organization.
 - ii. Operating agreement.

- iii. Certificate of existence.
 - iv. Authorizing resolution.
- o. Legal opinion.
- p. Evidence of zoning compliance.

[Sample Seller's Letter of Escrow Instructions]

_____, 20____

Acme Title Agency Inc.

Attn: _____

Re: Sale of 123 Main Street, Anywhere, Ohio, by ABC Company, LLC ("Seller) to XYZ Company, LLC ("Buyer")

Ladies and Gentlemen:

We represent Seller in connection with the captioned transaction. In that regard, we are delivering to you with this letter, to be held by you in escrow and released only in accordance with the terms of this letter, the following documents (collectively, the "Documents"):

1. Original Limited Warranty Deed (the "Deed") executed by Seller;
2. Original counterpart of Assignment and Assumption of Leases (the "Lease Assignment") executed by Seller;
3. Original counterpart of Assignment and Assumption of Contracts (the "Contract Assignment") executed by Seller;
4. Original Certificate Updating Representations and Warranties executed by Seller;
5. Original Non-Foreign Certificate executed by Seller;
6. Original Closing Affidavit executed by Seller;
7. Multiple original counterparts of a notice to tenants executed by Seller; and
8. Certificate of Managing Member of Seller (with Articles of Organization, Operating Agreement and Resolutions of the Members of Seller attached as exhibits).

You are to hold the Documents in escrow and release the Documents only in accordance with the terms of this letter.

You are authorized and directed to release the Documents from escrow if, and only if, upon such release:

- a. You have received matching counterparts of a Closing Statement (the "Closing Statement") executed by Seller and Buyer (receipt by fax or email is satisfactory);
- b. You have received an original counterpart of the Lease Assignment executed by Buyer;
- c. You have received an original counterpart of the Contract Assignment executed by Buyer; and
- d. You are in receipt of immediately available funds in the amount of the total disbursements indicated on the Closing Statement (the "Funds"), and are authorized, subject only to the release of the Documents from escrow, to disburse the Funds in accordance with the Closing Statement.

Immediately upon release of the Documents from escrow, you are to disburse the Funds in accordance with the Closing Statement, including a disbursement to Seller in the amount of \$_____ as indicated in the Closing Statement, in accordance with the wiring instructions furnished to you.

Upon release of the Documents from escrow, please deliver to me the counterpart of the Closing Statement executed by Buyer and the original counterparts of the Lease Assignment and the Contract Assignment executed by Buyer.

If you are not able, under the conditions set forth above, to release the Documents and disburse the Funds as set forth above by the close of business on _____, 20____, then you should, not later than _____, 20____, return the Documents to me.

Please indicate your acceptance of the escrow described herein by signing a copy of this letter in the space provided below and returning the signed letter to me.

Very truly yours,

Acme Title Agency, Inc. accepts the escrow described in the above letter, and agrees to perform the duties set forth above.

ACME TITLE AGENCY, INC.

By: _____

Name: _____

Title: _____

Date: _____, 20____

[Sample Buyer's Letter of Escrow Instructions]

_____, 20____

Acme Title Agency Inc.

Attn: _____

Re: American Title Insurance Company Commitment No. _____ (the "Commitment");
123 Main Street, Anywhere Ohio

Ladies and Gentlemen:

We represent XYZ Company, LLC ("Buyer") in connection with its purchase from ABC Company, LLC ("Seller") of the improved real property located at and commonly known as 123 Main Street, Anywhere, Ohio. Buyer is obtaining a loan (the "Loan") from Choice Bank, N.A. ("Lender") to finance such purchase.

We are enclosing the following:

1. Form of Limited Warranty Deed (the "Deed") to be executed and delivered by Seller to Buyer
2. Real Property Conveyance Fee Statement of Value;
3. Original counterpart of an Assignment and Assumption of Leases (the "Lease Assignment") executed by Buyer;
4. Original counterpart of an Assignment and Assumption of Contracts (the "Contract Assignment") executed by Buyer;
5. Form of Certificate Updating Representations and Warranties (the "Update Certificate") to be executed and delivered by Seller to Buyer;
6. Form of Non-Foreign Certificate (the "Non-Foreign Certificate") to be executed by Seller;
7. Form of a notice to tenants (the "Tenant Notice") to be executed by Seller;
8. Certificate of Managing Member of Buyer (with Articles of Organization, Operating Agreement and Resolutions of the Members of Buyer attached as exhibits);
9. Two original counterparts of a Loan Agreement (the "Loan Agreement") between Lender and Buyer, executed by Buyer;
10. Original Promissory Note (the "Note") in the principal amount of \$_____ payable by Buyer to the order of Lender, executed by Buyer;
11. Two originals of an Open-End Mortgage, Security Agreement and Fixture Filing (the "Mortgage") granted by Buyer to Lender, executed by Buyer;
12. Two originals of an Assignment of Rents and Leases (the "Assignment of Rents") granted

by Buyer to Lender, executed by Buyer;

13. Original Guaranty (the "Guaranty") by _____ ("Guarantor") for the benefit of Lender, executed by Guarantor; and

14. Two original counterparts of an Environmental Indemnity Agreement (the "Environmental Indemnity") by Buyer and Guarantor for the benefit of Lender, executed by Buyer and Guarantor.

Seller will furnish or cause to be furnished to you the original Deed, Update Certificate and Non-Foreign Certificate, an original counterpart of the Lease Assignment and the Contract Assignment, and multiple counterparts of the Tenant Notice, each executed by Seller in the forms enclosed. Lender will furnish or cause to be furnished to you an original counterpart of each of the Loan Agreement and the Environmental Indemnity, executed by Lender. Further, we anticipate that the following additional documents and funds will be furnished to you:

1. Matching counterparts of a Closing Statement (the "Closing Statement") executed by Seller, Buyer and Lender;
2. The net proceeds of the Loan (the "Loan Proceeds");
3. Funds from Buyer ("Buyer's Funds") in an amount which, when combined with the Loan Proceeds, is sufficient to make the disbursements provided for in the Closing Statement; and
4. All other documents, funds and evidence required by you in order for you to issue the policies described in items c and d below, including, but not limited to, all documents and evidence necessary to satisfy the requirements of Schedule B – Section 1 of the Commitment.

Please indicate your acceptance of the escrow described herein by signing a copy of this letter at the bottom and returning the signed copy to me. Upon my receipt of this letter signed by you, Buyer will, if other closing conditions have then been satisfied, (a) wire transfer Buyer's Funds to your escrow account, and (b) request Lender to wire transfer the Loan Proceeds to your escrow account, in each case in accordance with wiring instructions furnished by you.

The Loan Proceeds and Buyer's Funds may be disbursed by you, for the benefit of Buyer, to make all of the disbursements provided for in the Closing Statement, if, and only if, upon such disbursements:

- a. You have received all of the documents identified above;
- b. You have filed the Deed for record in the Office of the Recorder of _____ County, Ohio;
- c. You are in a position to issue to Buyer an owner's policy of title insurance in the amount of \$_____ in accordance with the Commitment, subject only to the exceptions set forth in items _____ of Schedule B – Section 2 of the Commitment, and with an ALTA Form 9 (comprehensive) endorsement, an access endorsement, a "same as" survey endorsement, and a tax parcel endorsement;
- d. You are in a position to issue to Lender a loan policy of title insurance in the amount of \$_____ with respect to the Mortgage; and

e. You are authorized by Lender to disburse the Loan Proceeds.

You may disburse the Loan Proceeds and Buyer's Funds prior to completing the filing described in item b above, provided that (i) you are in a position to insure the gap by issuing the owner's and loan policies of title insurance described in items c and d above, (ii) you are authorized by Lender to disburse the Loan Proceeds, and (iii) you promptly complete the filing described in item b above.

If you are not able, under the conditions set forth above, to disburse the Loan Proceeds and Buyer's Funds as set forth above by the close of business on _____, 20____, then you should, on the immediately following business day, return the Loan Proceeds to Lender and return Buyer's Funds to Buyer.

You are to deliver to me promptly after closing the owner's policy of title insurance described above and a time-stamped copy of Deed. You are to deliver to me promptly when available the original recorded Deed.

Very truly yours,

Acme Title Agency, Inc. accepts the escrow described in the above letter, and agrees to perform the duties set forth above.

ACME TITLE AGENCY, INC.

By: _____

Name: _____

Title: _____

Date: _____, 20____

Chapter 3:

Basics of Landlord-Tenant Law

Jennifer S. Bock, Esq.
Bock Legal Services, LLC
Bellbrook, Ohio

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NOTICE TO LEAVE THE PREMISES
BEFORE SUIT

Landlord

VS.

Tenants and All Other Occupants

On **Date 2020** at _____ pm, I
served the within named tenant(s) by
leaving a written copy thereof at their usual
place of abode.

On **Date 2020** at _____ pm, I
served the within named tenant(s) by
leaving a written copy thereof at their usual
place of abode.

MEMORANDUM
NOTICE TO LEAVE THE PREMISES BEFORE SUIT

To:

Tenants and all other occupants:

You are hereby notified that we want you on or before DATE, 2019, to leave the premises you
now occupy and which you have rented of us, situated and described as follows:

Property Address

City of _____, county of _____ and state of ***Ohio, Zip Code***

Grounds: Failure to Pay Rent

**YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION
MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS
AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.**

**YOU MUST VACATE THE PREMISES AND RETURN YOUR KEYS TO YOUR LANDLORD
IMMEDIATELY.**

5321.17(C) Termination of tenancy

10-Day Notice to Vacate

Tenant's Name:

Property Address:

Delivery Date of Notice:

.....

This notice is to inform you that your **tenancy will be terminated** in **10 DAYS** from the date of this notice (above), or on September 6, 2018. This is due to squatting as you received a 40-day notice to terminate your tenancy on July 17, 2018. This is also due to lease violations, including those listed in paragraph four (4), five (5), and eleven (11) of the lease. Please refer to your lease for the specific language, but the termination is based on damage to the premises, excessive waste, unsanitary conditions, obstruction of the premises, health code violations, and uncleanness.

In accordance with Section 8 regulations, XX, hereby advises you that you have ten (10) calendar days following the date of this letter in which you may meet with her to discuss the proposed termination of your tenancy, and any charges which are on your account. She can meet during the hours of 8-5 or can be contacted at XXX.

Should you not vacate the premises on the dates set forth above, legal action shall be taken against you to force an eviction, wherein you shall be given an opportunity to present a defense.

A copy of this letter is also being sent to you via mail and is being served upon you personally at your residence.

Persons with disabilities have the right to request reasonable accommodations to participate in an informal hearing process.

All door and mailbox keys must be returned upon your move out to XX or as agreed upon by you and the landlord. Your landlord or a representative will be entering the above property on September 7, 2018 for an inspection. If you do not vacate, an eviction will immediately proceed.

Please contact me with any questions.

Here are some helpful links for Section 8 -

<https://www.sectioneightapplication.com/apply/OH>

<https://www.hud.gov/states/ohio/renting>

<https://www.thebalancesmb.com/section-8-housing-eligibility-requirements-2125017>

30-Day Notice to Vacate

Tenant's Name:

Property Address:

Delivery Date of Notice:

.....

This notice is to inform you that your tenancy will be terminated in **30 DAYS** from the date of this notice (above). This due to _____ (nonpayment of rent, squatting, lack of contractual interest in the property).

You, (TENANT) _____ and all others, are required to vacate the above premises and remove all of your possessions by (DATE) _____. All door and mailbox keys must be returned upon your move out to (DATE) _____. Your landlord or a representative will be entering the above property on (DATE) _____ for an inspection. If you do not vacate, an eviction will immediately proceed.

Please contact me with any questions.

Your Information or Landlords

5321.17(B) Termination of tenancy

5321.11 Failure of tenant to fulfill obligations - remedies of landlord

Date

Tenant

Notice of Forfeiture

Dear Tenant,

Regarding the Land Installment Contract dated June 23, 2014 and the Addendum to the Land Installment Contract (hereafter "Addendum") dated November 1, 2017, I represent XX, Vendor in the Land Installment Contract (hereafter "Contract"), wherein you agreed to purchase the residence premises at XXX (hereafter "Property"), for a principal sum of \$45,000.00 with a \$0 down payment. The balance was to be paid in monthly installments of \$456.80 according to the Addendum to cover the principal debt, interest thereon at the rate of 7% per annum (computed monthly on the unpaid principal), insurance and property taxes. The first payment on the Addendum was paid November 10, 2017.

I was informed the past due balance is now as of July 1, 2018 \$2,009.92, including late fees. As of July 10, 2018, that balance will be \$2,511.74. No payment has been received since February 2018.

As set forth in the first statutory thirty-day Notice under RC 5313.05, the balance due upon the principal of the Contract, as of June 1, 2018, was the sum of \$1,507.44. It has not increased as no payment has been received.

This Notice is a Ten-Day Notice Prior to Forfeiture. You have not complied with your obligation to pay the installments due in your Contract.

The Contract will stand forfeited unless the purchaser performs the terms and conditions of the Contract within ten (10) days of the completed service of the within Notice to discharge the above arrears, or otherwise leave the premises.

If you will not have brought your delinquent obligations current, XX intends to bring foreclosure proceedings, pursuant to Ohio Revised Code Section 5313.07 and 2323.07 and related statutes.

Please contact XX or my office immediately to pay your delinquent obligations or let us know your intentions with the Property. Your other option is to cancel the Contract, remain in the property and pay monthly rent. Purchase of the Property can be visited at a later date. Thank you.

Respectfully,

Attorney

IN THE MIAMISBURG MUNICIPAL COURT
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

Landlord	:	Case No.
	:	
Plaintiff,	:	
	:	
v.	:	<u>COMPLAINT FOR</u>
	:	<u>FORCIBLE ENTRY AND</u>
	:	<u>DETAINER AND</u>
	:	<u>MONETARY DAMAGES</u>
Tenants and All Other Occupants	:	
	:	
Defendant.	:	

FIRST CAUSE OF ACTION

- 1) Plaintiff, XXXX, is the owner, and is entitled to immediate possession of the house and lot at the premises.
- 2) Defendant occupies the premises upon a lease. A copy of the lease is attached hereto and incorporated herein by reference and described as Exhibit "A".
- 3) Defendant is behind on the payment of rent for June, July, August, September and October 2016. Rent is still due and owing.
- 4) Plaintiff served Defendant with a notice in writing to vacate the premises for nonpayment of rent on October 11, 2016, as required by law. A copy of such notice is attached hereto and made part of this complaint, and described as Exhibit "B",
- 5) Defendant has ever since October 14, 2016 unlawfully and forcibly detained, and does still unlawfully and forcibly detain, from the Plaintiff, possession of the real estate.

SECOND CAUSE OF ACTION

- 6) Plaintiff incorporates the foregoing paragraphs and states further that Defendant is indebted to the Plaintiff for rent and late fees for the months of June, July, August September and October, 2016, in the amount of \$3,075.00, plus an amount not in excess of \$15,000 for Defendant's breach of the Lease Agreement.

7) Defendant may further owe Plaintiff a sum of money for actual damages and extraordinary wear and tear caused to the premises, the exact amount of which is undetermined at this time.

WHEREFORE, Plaintiff demands judgment against the Defendant and all other occupants for restitution and recovery of Premises at XXXX, and further a monetary judgment in the sum of \$3,075.00, plus all future rents and late fees, actual damages, and costs herein expended, and any other relief to which Plaintiff may be entitled.

Attorney Information

IN THE MIAMISBURG MUNICIPAL COURT
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

Landlord	:	Case No.
	:	
Plaintiff,	:	
	:	
v.	:	<u>PRAECIPE FOR WRIT OF</u>
	:	<u>RESTITUTION</u>
	:	
Tenants and All Other Occupants	:	
	:	
Defendant.	:	

To the Clerk:

Please issue a Writ of Restitution to enforce restitution and a move-out for the premises located at

Property Address

Attorney Information

Move Out Statement/Security Deposit Disposition

Date

Landlord Info

Tenant Info

Property Address in Question Info

Re: Security Deposit Statement

Dear Tenant:

Enclosed please find an itemized list of charges. Based on these charges, you have a balance due of \$3,345.14.

Credits—Security Deposit \$800.00

Total Credits \$800.00

Show Itemized List of Charges to Security Deposit

Total Up Charges Minus Security Deposit

Please remit the balance due immediately to Landlord to avoid further collection or legal action. If you have any questions or concerns regarding the charges or balance due, you must respond in writing at the address above.

(937) 505-8227/jennifer@bocklegalservices.com

Respectfully,

Landlord

Mail to last known address and keep returned mail. This itemized list is only required for those tenants who provide a forwarding address, but it is advisable to send one out regardless.

5321.16 Procedures for security deposits.

MIAMISBURG MUNICIPAL COURT
RENT ESCROW

Ohio Revised Code **5321.07 Failure of landlord to fulfill obligations - remedies of tenant.**

Notice, deposit of rent

A) Landlord fails to fulfill obligation of O.R.C 5321.04

1) **5321.04**

- a) Building, housing, health and safety codes that materially affect health or safety.
- b) Make repairs necessary to keep residence in habitable condition.
- c) Keep common areas safe and sanitary.
- d) Properly maintain all electrical, plumbing, sanitary, heating ventilating and air conditioning fixtures.
- e) Supply running water and reasonable heat.

OR:

B) Government agency finds premises not in compliance with building, housing, health or safety codes that affects health and safety of occupants.

THEN: Tenant gives/sends written notice to landlord specifying noncompliance and giving landlord thirty (30) days to cure.

THEN: Landlord fails to cure.

THEN: Tenant may deposit all rent due and thereafter due with the Clerk of Court.

Ohio Revised Code Chapter 5321: Landlords and Tenants

5321.02 Retaliatory action by landlord prohibited.

(A) Subject to section [5321.03](#) of the Revised Code, a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, or bringing or threatening to bring an action for possession of the tenant's premises because:

(1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety;

(2) The tenant has complained to the landlord of any violation of section [5321.04](#) of the Revised Code;

(3) The tenant joined with other tenants for the purpose of negotiating or dealing collectively with the landlord on any of the terms and conditions of a rental agreement.

(B) If a landlord acts in violation of division (A) of this section the tenant may:

(1) Use the retaliatory action of the landlord as a defense to an action by the landlord to recover possession of the premises;

(2) Recover possession of the premises; or

(3) Terminate the rental agreement.

In addition, the tenant may recover from the landlord any actual damages together with reasonable attorneys' fees.

(C) Nothing in division (A) of this section shall prohibit a landlord from increasing the rent to reflect the cost of improvements installed by the landlord in or about the premises or to reflect an increase in other costs of operation of the premises.

Effective Date: 11-04-1974 .

5321.03 Action for possession by landlord.

(A) Notwithstanding section [5321.02](#) of the Revised Code, a landlord may bring an action under Chapter 1923. of the Revised Code for possession of the premises if:

(1) The tenant is in default in the payment of rent;

(2) The violation of the applicable building, housing, health, or safety code that the tenant complained of was primarily caused by any act or lack of reasonable care by the tenant, or by any other person in the tenant's household, or by anyone on the premises with the consent of the tenant;

(3) Compliance with the applicable building, housing, health, or safety code would require alteration, remodeling, or demolition of the premises which would effectively deprive the tenant of the use of the dwelling unit;

(4) A tenant is holding over the tenant's term.

(5) The residential premises are located within one thousand feet of any school premises or preschool or child day-care center premises, and both of the following apply regarding the tenant or other occupant who resides in or occupies the premises:

(a) The tenant's or other occupant's name appears on the state registry of sex offenders and child-victim offenders maintained under section [2950.13](#) of the Revised Code.

(b) The state registry of sex offenders and child-victim offenders indicates that the tenant or other occupant was convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense.

(B) The maintenance of an action by the landlord under this section does not prevent the tenant from recovering damages for any violation by the landlord of the rental agreement or of section [5321.04](#) of the Revised Code.

(C) This section does not apply to a dwelling unit occupied by a student tenant.

Effective Date: 07-31-2003; 2007 SB10 07-01-2007 .

5321.031 College or university student tenant rental agreements.

A college or university may terminate a rental agreement with a student tenant prior to the expiration of the term of the agreement and require that the student vacate the dwelling unit only when the termination follows a hearing in which it was determined by the college or university that the student violated a term of the rental agreement or violated the college's or university's code of conduct or other policies and procedures. The hearing must be preceded by a written notice to the student, must include a right to be heard, and must otherwise comply with the college's or university's procedures for disciplinary hearings. The written rental agreement must specify the conditions under which the rental agreement may be terminated and specify the college's or university's notice and hearing procedures that will be followed in making a determination under this section.

Effective Date: 10-12-1994 .

5321.04 Landlord obligations.

(A) A landlord who is a party to a rental agreement shall do all of the following:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;

(2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a safe and sanitary condition;

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by the landlord;

(5) When the landlord is a party to any rental agreements that cover four or more dwelling units in the same structure, provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of a dwelling unit, and arrange for their removal;

(6) Supply running water, reasonable amounts of hot water, and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(7) Not abuse the right of access conferred by division (B) of section [5321.05](#) of the Revised Code;

(8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of the landlord's intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

(9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section [5321.17](#) of the Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises within three days after the giving of the notice required by that division and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section [1923.02](#) of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division. Such actual knowledge or reasonable cause to believe shall be determined in accordance with that division.

(10) Comply with the rights of tenants under the Servicemembers Civil Relief Act, 117 Stat. 2835, 50 U.S.C. App. 501.

(B) If the landlord makes an entry in violation of division (A)(8) of this section, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain a judgment for reasonable attorney's fees, or may terminate the rental agreement.

Amended by 129th General Assembly File No.138, HB 490, §1, eff. 9/28/2012.

Effective Date: 08-22-1990 .

[5321.05 Tenant obligations.](#)

(A) A tenant who is a party to a rental agreement shall do all of the following:

(1) Keep that part of the premises that he occupies and uses safe and sanitary;

(2) Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;

(3) Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits;

(4) Use and operate all electrical and plumbing fixtures properly;

(5) Comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes;

- (6) Personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;
- (7) Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;
- (8) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;
- (9) Conduct himself, and require persons in his household and persons on the premises with his consent to conduct themselves, in connection with the premises so as not to violate the prohibitions contained in Chapters 2925. and 3719. of the Revised Code, or in municipal ordinances that are substantially similar to any section in either of those chapters, which relate to controlled substances.
- (B) The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(C)

- (1) If the tenant violates any provision of this section, other than division (A)(9) of this section, the landlord may recover any actual damages that result from the violation together with reasonable attorney's fees. This remedy is in addition to any right of the landlord to terminate the rental agreement, to maintain an action for the possession of the premises, or to obtain injunctive relief to compel access under division (B) of this section.
- (2) If the tenant violates division (A)(9) of this section and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section [1923.02](#) of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division, then the landlord promptly shall give the notice required by division (C) of section [5321.17](#) of the Revised Code. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with division (A)(9) of section [5321.04](#) of the Revised Code. For purposes of this division, actual knowledge or reasonable cause to believe as described in this division shall be determined in accordance with division (A)(6)(a)(i) of section [1923.02](#) of the Revised Code.

5321.07 Failure of landlord to fulfill obligations—remedies of tenant.

(A) If a landlord fails to fulfill any obligation imposed upon him by section [5321.04](#) of the Revised Code, other than the obligation specified in division (A)(9) of that section, or any obligation imposed upon him by the rental agreement, if the conditions of the residential premises are such that the tenant reasonably believes that a landlord has failed to fulfill any

such obligations, or if a governmental agency has found that the premises are not in compliance with building, housing, health, or safety codes that apply to any condition of the premises that could materially affect the health and safety of an occupant, the tenant may give notice in writing to the landlord, specifying the acts, omissions, or code violations that constitute noncompliance. The notice shall be sent to the person or place where rent is normally paid.

(B) If a landlord receives the notice described in division (A) of this section and after receipt of the notice fails to remedy the condition within a reasonable time considering the severity of the condition and the time necessary to remedy it, or within thirty days, whichever is sooner, and if the tenant is current in rent payments due under the rental agreement, the tenant may do one of the following:

(1) Deposit all rent that is due and thereafter becomes due the landlord with the clerk of the municipal or county court having jurisdiction in the territory in which the residential premises are located;

(2) Apply to the court for an order directing the landlord to remedy the condition. As part of the application, the tenant may deposit rent pursuant to division (B)(1) of this section, may apply for an order reducing the periodic rent due the landlord until the landlord remedies the condition, and may apply for an order to use the rent deposited to remedy the condition. In any order issued pursuant to this division, the court may require the tenant to deposit rent with the clerk of court as provided in division (B)(1) of this section.

(3) Terminate the rental agreement.

(C) This section does not apply to any landlord who is a party to rental agreements that cover three or fewer dwelling units and who provides notice of that fact in a written rental agreement or, in the case of an oral tenancy, delivers written notice of that fact to the tenant at the time of initial occupancy by the tenant.

(D) This section does not apply to a dwelling unit occupied by a student tenant.

5321.09 Landlord application for release of rent.

(A) A landlord who receives notice that rent due him has been deposited with a clerk of a municipal or county court pursuant to section [5321.07](#) of the Revised Code, may do any of the following:

(1) Apply to the clerk of the court for release of the rent on the ground that the condition contained in the notice given pursuant to division (A) of section [5321.07](#) of the Revised Code has been remedied. The clerk shall forthwith release the rent, less costs, to the landlord if the tenant gives written notice to the clerk that the condition has been remedied.

(2) Apply to the court for release of the rent on the ground that the tenant did not comply with the notice requirement of division (A) of section [5321.07](#) of the Revised Code, or that the tenant was not current in rent payments due under the rental agreement at the time the tenant initiated rent deposits with the clerk of the court under division (B)(1) of section [5321.07](#) of the Revised Code.

(3) Apply to the court for release of the rent on the ground that there was no violation of any obligation imposed upon the landlord by section [5321.04](#) of the Revised Code, other than the

obligation specified in division (A)(9) of that section, any obligation imposed upon him by the rental agreement, or any obligation imposed upon him by any building, housing, health, or safety code, or that the condition contained in the notice given pursuant to division (A) of section [5321.07](#) of the Revised Code has been remedied.

(B) The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, as in other civil actions. A trial shall be held within sixty days of the date of the filing of the landlord's complaint, unless, for good cause shown, the court continues the period for trial.

(C) If the court finds that there was no violation of any obligation imposed upon the landlord by section [5321.04](#) of the Revised Code, other than the obligation specified in division (A)(9) of that section, any obligation imposed upon him by the rental agreement, or any obligation imposed upon him by any building, housing, health, or safety code, that the condition contained in the notice given pursuant to division (A) of section [5321.07](#) of the Revised Code has been remedied, that the tenant did not comply with the notice requirement of division (A) of section [5321.07](#) of the Revised Code, or that the tenant was not current in rent payments at the time the tenant initiated rent deposits with the clerk of court under division (B)(1) of section [5321.07](#) of the Revised Code, the court shall order the release to the landlord of rent on deposit with the clerk, less costs.

(D) If the court finds that the condition contained in the notice given pursuant to division (A) of section [5321.07](#) of the Revised Code was the result of an act or omission of the tenant, or that the tenant intentionally acted in bad faith in proceeding under section [5321.07](#) of the Revised Code, the tenant shall be liable for damages caused to the landlord and costs, together with reasonable attorney's fees if the tenant intentionally acted in bad faith.

5321.11 Failure of tenant to fulfill obligations—remedies of landlord.

If the tenant fails to fulfill any obligation imposed upon him by section [5321.05](#) of the Revised Code that materially affects health and safety, other than the obligation described in division (A)(9) of that section, the landlord may deliver a written notice of this fact to the tenant specifying the act or omission that constitutes noncompliance with the pertinent obligations and specifying that the rental agreement will terminate upon a date specified in the notice, not less than thirty days after receipt of the notice. If the tenant fails to remedy the condition specified in the notice, the rental agreement shall terminate as provided in the notice.

5321.15 Acts of landlord prohibited if residential property involved.

(A) No landlord of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises, or threat of any unlawful act, against a tenant, or a tenant whose right to possession has terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapters 1923., 5303., and 5321. of the Revised Code.

(B) No landlord of residential premises shall seize the furnishings or possessions of a tenant, or of a tenant whose right to possession has terminated, for the purpose of recovering rent payments, other than in accordance with an order issued by a court of competent jurisdiction.

(C) A landlord who violates this section is liable in a civil action for all damages caused to a tenant, or to a tenant whose right to possession has terminated, together with reasonable attorneys fees.

5321.16 Procedures for security deposits.

(A) Any security deposit in excess of fifty dollars or one month's periodic rent, whichever is greater, shall bear interest on the excess at the rate of five per cent per annum if the tenant remains in possession of the premises for six months or more, and shall be computed and paid annually by the landlord to the tenant.

(B) Upon termination of the rental agreement any property or money held by the landlord as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with section 5321.05 of the Revised Code or the rental agreement. Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant together with the amount due, within thirty days after termination of the rental agreement and delivery of possession. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address as required, the tenant shall not be entitled to damages or attorneys fees under division (C) of this section.

(C) If the landlord fails to comply with division (B) of this section, the tenant may recover the property and money due him, together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys fees.

5321.17 Termination of tenancy.

(A) Except as provided in division (C) of this section, the landlord or the tenant may terminate or fail to renew a week-to-week tenancy by notice given the other at least seven days prior to the termination date specified in the notice.

(B) Except as provided in division (C) of this section, the landlord or the tenant may terminate or fail to renew a month-to-month tenancy by notice given the other at least thirty days prior to the periodic rental date.

If a tenant violates division (A)(9) of section 5321.05 of the Revised Code and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the residential premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code, the landlord shall terminate the week-to-week tenancy, month-to-month tenancy, or other rental agreement with the tenant by giving a notice of termination to the tenant in accordance with this division. The notice shall specify that the tenancy or other rental agreement is terminated three days after the giving of the notice, and the landlord may give the notice whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with

division (A)(9) of section 5321.04 of the Revised Code. For purposes of this division, actual knowledge or reasonable cause to believe as described in this division shall be determined in accordance with division (A)(6)(a)(i) of section 1923.02 of the Revised Code.

(D) This section does not apply to a termination based on the breach of a condition of a rental agreement or the breach of a duty and obligation imposed by law, except that it does apply to a breach of the obligation imposed upon a tenant by division (A)(9) of section 5321.05 of the Revised Code.

A Few Court Cases Regarding Security Deposit Charges

Bailey v. Fairchild, 2010-Ohio-5750, the court found the trial court erred in awarding a landlord damages for carpet replacement when they did not replace the carpet. Here, the defendant is asking for damages for carpet repair, but did not repair the carpet.

Peters v. Durroh (1971), 28 Ohio App. 2D 245, 277N.E.2d 69, the court found landlords are only entitled to recover the difference between the value of the carpeting when the tenant moved in and the value of the carpeting when the tenant moved out. If the landlord does not offer evidence to the court that the carpet was new at move in, then a court trying to decide on whether the landlord should have been able to deduct the security deposit would be speculating and the courts cannot speculate.

Courts look at evidence of what the landlord paid for the carpet at move in, how old it was, the life expectancy, and prorate the damages to include tenant's use.

Ohio Rev. Code §§ 5321.05(A), 321.16(B); *Ohio Environmental Development Ltd. Partnership v. Envirotech Systems Corp.* (N.D. Ohio, 03-14-2007), 478 F.Supp.2d 963—a tenant is not responsible for the costs of addressing ordinary wear and tear, a landlord cannot withhold a security deposit for ordinary wear and tear.

Sokolovic v. Hamilton, 195 Ohio App.3d 406, 2001-Ohio-4638, § 15 (8th District)—landlord can prove property damage for things like carpet, blind, appliances, amount awarded will reflect the depreciation value of the property, not the cost of a replacement.

Dennis v. Morgan, 89 Ohio St. 3d 417, 419, 732 N.E.2d 391 (2000)—amount claimed in a complaint may be an estimate of the damages and must prove actual damages at trial.

I'm a New Landlord. What Should I Do Before Renting to a Tenant?

The majority of problems landlords experience with tenants can be avoided by diligently evaluating applicants before entering into a lease agreement. While screening an applicant can incur an upfront cost, it can be charged to the applicant in the form of an “Application Fee”, and can reduce the amount of cost risk that tenants may pose in the future.

The easiest and most cost-effective way to screen an applicant is to require all tenants to fill out an application form, and completely, meaning no blanks allowed. If the application is turned in with a blank section, return it to the applicant and ask they completely fill out the information. This application should ask for employment information; current and past lawsuit information; bankruptcy history; date of birth; social security number; previous tenant history, including evictions and landlord information so you can verify the history; proposed occupants and pets; vehicle information; banking information; criminal offenses and any known expenses that will affect monthly income. The application form should also require that the tenant authorize you to perform a background check.

The next step of the screening process is to confirm the information provided by the applicant. The landlord should first call the applicant’s stated employer and confirm that the applicant is currently employed. Next, the landlord should contact the properties listed under previous tenant history. These previous landlords will often be able to alert you to applicants that have failed to pay rent or have damaged rental properties in the past. If an applicant fails to provide a previous tenant history that should raise an immediate red flag. If an applicant provides false information or the you are not able to verify the provided information, you should not rent to that applicant. Finally, you should pay for and review a comprehensive background check that will reveal any other potential problems with an applicant.

Bock Legal Services, LLC can create a comprehensive application for you and has skip tracing software that generates a 60 page report detailing previous addresses, bankruptcy and lawsuit information, criminal history, and more. Reports are \$15 a piece and can be charged to the applicant as an “application fee”. Serious renters will gladly pay the fee. Contact Bock Legal Services, LLC to have your application created and/or a background check ran today!

What should be in a lease from a landlord’s or tenant’s perspective?

The signing of a lease constitutes the formation of a binding legal contract between a landlord and tenant. The history of landlord and tenant law is ripe with litigation between landlords and tenants. In an attempt for clarity and uniformity, most states (including Ohio) have passed laws which assign duties to landlords and tenants.

In the event that legal action should arise between a landlord and tenant, the Ohio Revised Code (ORC) will dictate the result unless the ORC is silent on the issue being litigated. A lease is crucial for both parties in allocating the risks and responsibilities that the Ohio Revised Code does not address. The lease will control in the absence of guidance by the ORC.

The following are some of the key duties assigned to landlords by the ORC:

- 1) To comply with all applicable building, housing, health and safety codes that materially affect health and safety.

- 2) To make all repairs that are reasonably necessary to put and keep the premises in a habitable condition.
- 3) Maintain in good and safe working order all electrical, plumbing, sanitary, heating, ventilating and air conditioning fixtures that are supplied or required to be supplied by the landlord.
- 4) Not abuse the right of access to the premises provided by the ORC.

The following are some of the key duties assigned to Tenants by the ORC:

- 1) Keep the premises safe and sanitary.
- 2) Dispose of all garbage and rubbish in a sanitary manner.
- 3) Use and operate all electrical and plumbing fixtures properly.
- 4) Maintain the safe and good working order of all fixtures and appliances provided by the landlord.
- 5) It should be noted that the duties assigned to landlords and tenants are quite vague. Caselaw has supplemented the ORC. If you are a landlord or tenant and you have a question about a lease or a potential violation of the ORC, you should seek the advice of an attorney.
- 6) Below is an example of a typical lease. Leases are full of legalese and can be difficult to read. As a landlord it is imperative to have a landlord review your lease. As a tenant it is imperative that you read the lease and in the event that something is unclear, seek advice of legal counsel.

Commonly Asked Questions from Tenants

1. My landlord isn't making repairs, what can I do?
 - a. 30 day written notice to the landlord and then escrow action. 5321.07 Failure of landlord to fulfill obligations—remedies of tenant.
 - b. A judge will then order the landlord to make repairs, allow the rental lease to be terminated and/or allow the tenant to receive the rent back.
2. Can I get out of my lease early if my landlord isn't making repairs?

Same answers as above.
3. Can my landlord just enter my home whenever he/she feels like it?
 - a. No, at least a 24-hour notice is required, unless it's a maintenance emergency.
 - b. 5321.05(B)—(B) The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
4. I received a three-day notice to leave. Isn't some other noticed required? Doesn't it have to be more than three days? Do holidays and weekends count on the three-day notice?
 - a. If the notice is for nonpayment of rent, illegal activity or some other egregious lease violation, only a 3-day notice is required. It is three consecutive days, so weekends and holidays count. If the landlord is terminating your lease agreement for no reason at all, a 30-day notice is required. Notice requirements are different for Section 8 tenants.
 - b. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with division (A)(9) of section [5321.04](#) of the Revised Code.
5. An eviction complaint has been filed against me. What can I do? How much time to I have?
 - a. Attend the hearing and state any valid defenses.
 - b. Timing depends on when the landlord files the writ, but after the hearing is held, anywhere from 3-10 days before a set out occurs.
 - c. A set out is where a bailiff will forcibly remove you from the property. Your stuff is considered abandoned at that point and can be trashed.
6. Can my landlord just change the locks and put my stuff out?

No, this is considered a self-help eviction, which could result in the landlord having to pay damages to the tenant, and possibly be convicted of a crime.

7. I didn't receive my security deposit back. Can I sue my landlord?
Yes, 5321.16(C)—If the landlord fails to comply with division (B) of 5321.16, the tenant may recover the property and money due him, together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys' fees.
8. I don't agree with the charges against my security deposit. What can I do?
- a. Dispute the charges in writing, negotiate a settlement, and provide proof of the opposite of the charges.
 - b. Sue for the deposit back in small claims court
9. Can I sublet my rental?
Refer to the lease agreement.
10. My roommate moved out without notice. Can I charge her for rent?
A lease is a contract. As a contract, it is enforceable by the parties to the contract. That means that the landlord can enforce the lease against the tenants, or the tenants against the landlord. It also means that one tenant can enforce it against the other, if the second tenant breaches the lease. Only those terms in the lease can be enforced. For example, the first tenant could sue the second for her share of the rent, but if the lease does not mention utilities, may not be able to pursue a claim against her for outstanding gas or electric bills as part of the cause of action for payment of the lease.
11. My house is infested with bugs and rodents. What can I do?
Refer to the lease agreement, call the city, notify the landlord in writing, put rent into escrow.
12. My neighbors are being noisy and doing drugs. What can I do?
Notify the landlord, call the police, bring up to the landlord the quiet use and enjoyment part of your lease if it's being violated.
13. Can my landlord raise my rent whenever?
No, not if it is a lease for a term. However, if it's a month-to-month lease, then the landlord can usually raise the rent as much as she or he likes after giving 30 days' notice. The notice usually has to be in writing and might need to be dated and given personally to the tenant or sent by registered mail.

Chapter 4: Commercial Leasing from Soup to Nuts

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Chapter 4:

Commercial Leasing from Soup to Nuts

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I. Introduction

A. *What Is a Lease?*

A lease is both a contract and a conveyance. Accordingly, leases are governed both by real property law and by contract law. The lease conveys an estate of years to the tenant, while creating contractual obligations between the landlord and tenant. *Mark-It Place Foods, Inc. v. New Plan Excel Realty Trust*, 156 Ohio App. 3d 65, 2004-Ohio-411, 804 N.E.2d 979 (4th Dist. Scioto Cty. 2004); *Myers v. East Ohio Gas Co.*, 51 Ohio St. 2d 121, 5 Ohio Op. 3d 103, 364 N.E.2d 1369 (1977). The court will apply ordinary principles of contract law to interpret the agreement. *Lamme v. Pope*, 2004-Ohio-5831, 2004 WL 2453346 (Ohio Ct. App. 2d Dist. Greene Cty. 2004) *Myers v. East Ohio Gas Co.*, 51 Ohio St. 2d 121, 5 Ohio Op. 3d 103, 364 N.E.2d 1369 (1977). Leases can be classified by the type of property or by the allocation of costs between the landlord and tenant.

B. *Common Types of Commercial Leases.*

1. Office leases may be for space in a larger building or project (e.g., an entire building in an office park) or for an entire property.
 - a. If the lease is for part of a building or project, the lease will often include shared facilities, such as parking, lobbies, elevators, and common services.
 - b. Special uses may require special provisions, e.g., medical offices.
2. Retail leases, like office leases, may often include shared parking, facilities, and services.
 - a. Shopping center leases may be for an anchor store, in-line space, or outparcels.

- b. Free standing stores.
 - c. Supermarket.
 - d. Restaurant/bar.
- 3. Industrial space may be for free-standing property or for space in an industrial building or industrial park. Special considerations for hazardous materials.
- 4. Ground leases are long-term leases for land on which the tenant will construct and operate a specific improvement. The tenant owns the building and improvements during the lease term and surrenders them to the landlord at the end of the term.
 - a. Ground leases often contain special terms to allow the tenant to finance the construction by means of a leasehold mortgage.
 - b. In a *subordinated ground lease*, the landlord also submits its reversion to the tenant's mortgage, putting the entire fee at risk if the tenant is unable to repay its mortgage loan.
 - c. Leases for a term of 99 years, renewable forever, are treated as equivalent to fee ownership for many purposes. See Ohio Rev. Code § 319.54(G)(3)(i); Ohio Rev. Code § 2105.04 (descent and distribution); Ohio Rev. Code § 5302.30(B)(1); Ohio Rev. Code § 5711.01 and 5711.02; Ohio Rev. Code § 5709.06 (lands belonging to the state, a municipal corporation, religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or trustees for free education only, or held by the state in trust).
- 5. License agreements are similar to leases, but grants the licensee the exclusive right to exclusive occupancy so far as is necessary to perform the licensed act and no further, whereas a lease gives the right to possession and exclusive occupancy for all purposes not prohibited by the lease. *Di Renzo v. Cavalier*, 156 Ohio St. 386, 60 Ohio Op. 13, 135 N.E.2d 394 (1956).
 - a. Department stores often use license agreements to grant other companies the right to operate a given department (e.g., cosmetics, fine jewelry, and shoes) as part of the store.
 - b. Whether an arrangement is a lease or a license depends on the scope of rights granted to the operator and not the name that the parties give the arrangement. See discussion at K. Kuehnle & J. Levey, OHIO REAL ESTATE LAW, § 45:4. One test is the degree to which the place involved can be described without regard to the use that the licensee/lessee will make of the space. *Schloss v. Sachs*, 63 Ohio Misc. 2d 457, 631 N.E.2d 212 (Hamilton Cty. Mun. Ct. 1993).

6. Miscellaneous leases—beyond the scope of this presentation.
 - a. Oil and gas leases. *See generally* K. Kuehnle & J. Levey, *Ohio Real Estate Law*, Chapter 47.
 - b. Cell phone towers.
 - c. Billboard leases.

C. *Commercial Leases May Be Full-Service Leases (aka Gross Leases) or Net Leases.*

1. Full Service.

Tenant pays a single fixed amount each month. Landlord is responsible for property taxes, maintenance, insurance, and any other operating costs, with the attendant risk if these costs increase beyond any increases in the fixed rent.

2. Net lease.

The tenant pays a fixed amount of rent each month, together with variable amounts to compensate the landlord for some or all of the costs of taxes, insurance, and maintenance.

- a. In triple net, or NNN leases, tenant pays for each of these categories of expense.
- b. In a double net lease, the tenant pays taxes and insurance and the landlord pays for maintenance.
- c. In a single net lease, or net lease, the tenant pays real estate taxes and the landlord pays insurance and maintenance.
- d. These terms can lead to confusion. In practice, “net” is often used interchangeably with “triple net” or NNN. The terms “double net” and “single net” are not often used. For those reasons, it is best to clarify in the term sheet or letter of intent which categories of expense are included in the rent and which categories are passed through as separate charges to the tenant.

D. *Lawyer’s job.*

The lawyer’s job is to make sure that the lease is clear, unambiguous, well-organized, and complete and reflects the deal that the parties made.

1. Readability—not the same as “dumbing down” the lease.
2. When you are reading a 40-page document, little things matter.
 - a. Language.
 - b. Table of contents.
 - c. Consistent definitions and index of defined terms.

- d. Frontloading.
 - e. Section numbering—try to avoid paragraphs that are not numbered. Advantages of legal style/AIA style numbering.
3. The sample clauses and forms in these materials are taken from actual deals and reflect the compromises and time pressures of those deals. View them as samples to spur your thinking, not as models of perfection.

E. What Is Frontloading?

Frontloading is Kenneth A. Adams’s term for drafting a contract so that all of the economic terms appear at the beginning, along with any other information that varies from deal to deal (or in our case, from lease to lease). See Kenneth A. Adams, *A Manual of Style for Contract Drafting* (ABA Section of Business Law, 2d Ed. 2008). Typical front-end terms in an office lease include:

1. Building and premises data (see Premises, below), including any expansion or contraction options and dates and amounts of any escalations.
2. Term information (see Term, below), including rent commencement date, if different from the term commencement date, and any renewal or termination options.
3. Base rent data (see Fixed or Base Rent, below), including dates and amounts of any escalations.
4. Amount of security deposit and amount and types of any other security for tenant’s obligations (see Deposits and Other Security, below), including the full legal names of any guarantors.
5. Tenant’s *pro rata* share of operating costs.
6. Amount of any construction allowance or tenant improvement allowance and a cross-reference to any exhibits describing landlord’s work or tenant’s work.
7. Notice addresses for landlord, tenant, and the building manager, if any.
8. Address for payment of rent.

F. Analyzing a Draft Lease.

1. Start from a checklist.
2. Accuracy.
3. Conformity to the term sheet.
4. Follow the money.
5. Red dollars and green dollars.
6. Client concerns.

II. Planning the Deal—Before You Get to the Term Sheet

A. Long lead-Time Issues.

1. Space plan.
2. Who designs the tenant improvements?
3. Who constructs tenant improvements?
4. Lender approval.

B. Landlord Planning.

1. Who is the landlord?
2. Rent and economics.
3. Floor plate/floor plan drawings and space drawings.
4. Construction allowance or budget.
5. Selection of lease form.
6. Conflicts with other leases.
7. Availability of the space.

C. Tenant Planning.

1. Amount of usable space needed—not the same as rentable square feet.
 - a. Expansion options.
 - b. Type of option—right of first offer, right of first refusal, and straight option.
 - c. Contraction options.
2. Build-out.

Electric outlets, lighting requirements, any special HVAC or security needs, or other special needs.
3. Timing.
 - a. Estimated delivery date/expiration of old lease.
 - b. Remedies for late delivery.
 - c. Negotiate extension from current landlord?
 - d. Move-in or start-up needs.
4. Exit strategy—is there an available termination option? If not, what are the chances of negotiating a buyout?

D. *Landlord Concessions.*

1. Build-out concessions—allowance or payment.
2. Free parking.
3. Fitness/child care facility use.
4. Other building amenities (*e.g.* quasi-public employee cafeterias, Wi-Fi).
5. Tenant representation costs.
6. Space planning and design costs.
7. Moving allowances.
8. Lease buy-outs.
9. Wiring/fiber optics.

E. *Matters Affecting Bargaining Power.*

1. Soft market or tight market.
2. Time demands.
3. Credit.
4. Other factors.

III. Term Sheets and Letters of Intent

A. *Term Sheet versus Letter of Intent.*

1. Downsides of an LOI include risk that court finds it to be enforceable (or that it creates an obligation to negotiate in good faith) and risk that LOI boilerplate (such as clauses dealing with maintenance or insurance) complicate the lease negotiations.
2. Time spent drafting/negotiating LOI might better be spent on the lease itself.

B. *Contents.*

1. Parties.
2. Location and size of premises.
3. Term, including renewals, if any.
4. Delivery date.
5. Design, build-out, and cost of tenant improvements.
6. Guarantors.
7. Tenant options (termination and expansion/downsizing).

IV. Parties and Dates

Preamble of the lease normally contains the names of the parties and the date of the lease. The date is usually the date that the last party (typically the landlord) signs the lease.

A. *Names.*

Verify the full legal name of each party and make sure the names of the parties in the signature block and the acknowledgment match the names in the preamble. *Ruben v. SM&N Corp.*, 83 Ohio App. 3d 80, 613 N.E.2d 1101 (8th Dist. Cuyahoga Cty. 1993).

B. *Liability.*

Remember that corporate shareholders and members of LLCs are *not* personally liable for obligations under leases signed by the corporation or the LLC. If you want a guaranty, negotiate for one. *Executive Business Centres, Inc. v. TransPacific Mfg., Inc.*, 2009-Ohio-516, 2009 WL 282383, (Lucas Cty. App. 6th Dist. 2009); *Jewell v. Victorian Village Internal Med., Inc.*, 2009 WL 1314876, 2009-Ohio-2233 (Cuyahoga Cty. App. 8th Dist. 2009). Shareholders do not become liable on the lease simply because they vote to dissolve the corporate tenant. *Jewell v. Victorian Village Internal Medicine, Inc.*, *supra*.

C. *Signatures and acknowledgements.*

1. Ohio law mandates acknowledgement of landlord's signature for term exceeding three years (including all renewal options). Ohio Rev. Code §§ 5301.01 and 5301.08; *Burger v. Buck*, 2008-Ohio-6061, 2008 WL 4964670 (Portage Cty. App. 11th Dist. 2008) (No. 2008-P-0041), *appeal not allowed*, 121 Ohio St. 3d 1442, 903 N.E.2d 1224, 2009-Ohio-1638 (Ohio Apr. 08, 2009); *Grundstein v. Suburban Motor Freight*, 92 Ohio App. 181, 49 Ohio Op. 312, 62 Ohio L. Abs. 251, 62 Ohio L. Abs. 252, 107 N.E.2d 366 (2d Dist. Franklin Cty. 1951). Note: Remote notarization is now permitted in Ohio pursuant to Ohio Rev. Code § 147.542, which became effective on September 20, 2019.
2. Make sure the names are correct and consistent.
3. The signature block, acknowledgements, and authorizing resolutions should track the chain of authority from the signing entity to the individual who signs for the entity (whether landlord, tenant, or guarantor). Verify the correct legal name and organizational status of any entity in the chain. With the ready availability of online records of corporate formation/registration, there is no excuse not getting this right.

V. Premises

A. Address.

Address (and name, if any) of building and number of total rentable square feet in the building. Include an exhibit with the legal description.

B. Premises.

This includes suite number, reference to a drawing, number of rentable square feet, and percentage of total rentable area. A site plan with the premises clearly indicated (cross hatching, numbering, shading, etc.) should be attached as an exhibit and referred to in the lease.

C. Appurtenant rights

These include parking areas, other common areas, and easement rights.

D. Measurement and accuracy.

Shopping center leases often include the method for measuring the premises—typically to the outer surface of exterior walls and partitions and partitions separating the premises from the common area and to the midpoint of any partitions separating the premises from adjoining premises. Office and industrial leases typically incorporate the measurement standards of the Building Owners and Managers Association (BOMA). The standards change from time-to-time; make sure to specify which edition of the BOMA standards are being used and whether the standards are the Office Standard or the Industrial Standard.

BOMA's website is <http://www.boma.org>.

1. Suppose the rentable square footage in the lease is not accurate. Earlier Ohio cases hold that a shortfall does not entitle the tenant to a decrease in rent, absent a lease provision that expressly calls for adjusting the rent in that event. *Hannah v. Pixley*, 9 Ohio L. Abs. 526, 1930 WL 2308 (Ct. App. 4th Dist. Scioto Cty. 1930); *Euclid Stores Co. v. Willard*, 7 Ohio L. Abs. 633, 1929 WL 2222 (Ct. App. 8th Dist. Cuyahoga Cty. 1929). A tenant may be entitled to rescind the lease on the ground of mutual mistake, but only if the tenant acts promptly upon discovering the shortfall.
2. A 2004 Hamilton County appellate case reached a radically different result. Three years into the term, the tenant discovered a shortfall of less than 8 percent of the agreed square footage and sued to reduce the rent retroactively to the first day of the term. The court of appeals reversed a directed verdict for the landlord and entered judgment for the tenant, despite the lease's statement that the premises "shall be stipulated for all purposes to be approximately 5845 square feet." To the court of appeals, this language demonstrated that the parties intended to reserve the right

to readjust the rent if the square footage were later discovered to be otherwise. *Local Mktg. Corp. v. Prudential Ins. Co. of Am.*, 159 Ohio App. 3d 410, 2004-Ohio-7001, 824 N.E.2d 122 (1st Dist., Hamilton Cty. 2004).

- a. The reported opinion does not identify the loss factor (also called common area factor); i.e., the difference between actual square footage and rentable square footage. The opinion also does not indicate whether the lease specifies how the rentable square footage was determined.
 - b. *Local Marketing* has not been adopted outside of Hamilton County, but it poses a potential risk for landlords throughout the state. Expressing the rent as an amount per square foot increases the risk to the landlord if there is a shortfall.
3. Drafting tip: A *Local Marketing*-style rent adjustment can be devastating to the landlord. The landlord's acquisition costs, mortgage payments, and taxes do not go down just because a judge reduces the rent, nor do the rents of other premises in the building go up to offset the loss. Possible defensive measures include:
- a. Reciting that the tenant deems the rent a fair consideration for leasing the premises, regardless of rentable square footage (restoring the pre-*Local Marketing* rule);
 - b. Reciting that the tenant has had the opportunity to measure the premises before signing the lease and waives any discrepancy that may exist;
 - c. Granting a right to re-measure within a limited time, with failure to re-measure constituting a waiver; and
 - d. Providing that if the rentable square footage is not as set forth in the lease, the parties agree that the rent per square foot and tenant's *pro rata* share of expenses will be multiplied by a fraction equal to the actual rentable square footage divided by the rentable square footage stated in the lease so as to preserve to landlord the rent in the gross amount stipulated by the lease.

VI. Term

The front-end should include the length of the term, the method for determining when the term starts and ends, and the existence, number, and duration of any renewal or extension options.

A. *Commencement Date.*

Commencement date may be the date the lease is signed, a specified later date, or upon the occurrence of some future condition (e.g., the earlier of the date the tenant opens for business in the premises or "X" days after the landlord delivers possession of the premises in the condition required by the lease). Retail tenants sometimes negotiate to postpone the commencement date:

1. In a new shopping center, until a given number of anchor tenants, and/or in-line tenants occupying a given percentage of the in-line space, have opened for business; and
2. In a new or existing shopping center, if the commencement date would otherwise fall during their slow sales periods or on a date that would not give them sufficient time to gear up for a peak season. E.g., a clothing retailer may want a clause giving it the right to postpone a commencement date that would otherwise occur during the months of December, January, February, June, or July.

B. *Expiration Date.*

The expiration date may be a specified date or a given amount of time after either the commencement date or the rent commencement date (if rent does not commence on first day of term.)

1. For convenience, most leases end on the last day of the month, rather than the exact anniversary of commencement, e.g., “the last day of the 120th full calendar month after the Rent Commencement Date.”
2. Shopping center leases often extend the final year so as to expire either on December 31, to coincide with the end of the calendar year, or on January 31, to correspond with the common retail fiscal year ending on the Saturday closest to January 31.

C. *Fixed Dates.*

If the lease sets forth fixed dates for the term to begin and end, late delivery of the premises will not delay the commencement or expiration date unless the lease expressly provides for adjusting those dates. *Adlaka v. Quaranta*, 2005-Ohio-5059, 2005 WL 2338630 (Ohio Ct. App. 7th Dist. Mahoning Cty. 2005).

D. *Drafting Tip.*

If the commencement and expiration dates cannot be determined from the face of the lease, the lease should state that as soon as the commencement date is known, the parties will sign a commencement date agreement setting forth the actual dates, provided that failure to sign the agreement will not delay the commencement or expiration of the term. Exhibit A (attached) is a sample agreement.

E. *Renewal or Extension Options.*

Require that the option be exercised in writing and specify the deadline for giving notice of exercise. Leave enough time to market the space if the tenant fails to renew. From a tenant’s perspective, be sure the exercise deadline is consistent with the nature of the tenant’s business and realistic planning milestones. A deadline a year or more in advance of the term expiration date will not be feasible for many tenants.

1. Landlord will want to state that failure to notify in time is an absolute waiver of the option. A strong tenant may bargain for the right to a reminder notice, preserving the renewal option if the tenant forgets to exercise the option in time.
2. Even without the right to a reminder, a court may relieve the tenant from the consequences of missing the deadline if the tenant has made valuable improvements to the premises or if forfeiture of the option would be inequitable, provided that the failure resulted from accident, fraud, surprise, or honest mistake and did not prejudice the landlord. *Vivi Retail, Inc. v. E&A Ne. Ltd. P'ship*, 2008-Ohio-4705, 2008 WL 4263446 (Cuyahoga Cty. App. 8th Dist. 2008); *Ward v. Washington Distribs., Inc.*, 67 Ohio App. 2d 49, 21 Ohio Op. 3d 362, 425 N.E.2d 420 (6th Dist. Lucas Cty. 1980). Other courts have refused to relieve a tenant from the consequences of its own neglect. *Convenient Food Mart, Inc. v. Atwell*, 2005-Ohio-704, 2005 WL 407581 (Ohio Ct. App. 11th Dist. Lake Cty. 2005); *Kern v. Clear Creek Oil Co.*, 149 Ohio App. 3d 560, 2002-Ohio-5438, 778 N.E.2d 115 (5th Dist. Ashland Cty. 2002). Each case will turn on its own facts.
3. Consider whether to add one or more conditions that may bar the exercise of the option, such as an event of default by the tenant continuing at the time of exercise or a given number of past defaults, even though timely cured.
4. Set forth the renewal rent or the method for determining it. Although a 1947 Ohio Supreme Court opinion holds that a court of equity can establish the renewal rent where the lease option leaves the renewal rent to be agreed upon between the parties. *Moss v. Olson*, 148 Ohio St. 625, 36 Ohio Op. 25, 276 N.E.2d 875 (1947), it is advisable to avoid "agreements to agree." Tenant clients need to be made aware that leaving the renewal rent open to agreement risks loss of the option as a practical matter if the landlord refuses to bargain in good faith about the rents. Common approach is to require the parties to negotiate for a stated period; if no agreement is reached, the renewal rent is determined by appraisal. From a tenant's perspective, consider requiring the landlord to submit its proposed renewal rent well in advance of deadline for exercise of the applicable option. See "Extended Term Rent" portion of the "Rent and Additional Rent-Office" clause attached as part of Exhibit C.

VII. Rent

Rent typically consists of a fixed monthly amount and one or more variable amounts. Fixed rent is typically referred to as minimum rent in retail leases and as fixed rent or base rent in office or industrial leases. The fixed rent may be constant during the entire term, increase according to a fixed schedule, or adjust at intervals according to the consumer price index (CPI) or other standard.

A. Fixed Rent.

Fixed rent should be stated in the front-end as a given amount per annum, payable in monthly installments, e.g., “\$12,000 per year payable in monthly installments of \$1000,” not “\$12 per year per rentable square foot.”

1. Letters of intent, term sheets, or other preliminary documents often state the rent as an amount per square foot per year. It is risky to carry this figure over into the lease because of the *Local Marketing* case.
2. Stating the rent as an annual figure may help bind the tenant to a tenancy from year to year, rather than month to month, if there is a holdover at the end of the term or if the lease is defectively executed.

B. Rental Payments.

Require that all rent be paid free of offsets, counterclaims, recoupments, or defenses (“pay now, fight later”), specify the address to which rent should be sent, and reserve the landlord’s right to change that address from time-to-time. Rent for any partial calendar year or partial calendar month should be prorated. Sample clause:

§ 3.01—Base Rent. Tenant shall pay to Landlord as Base Rent for the Premises the amounts specified in Section 1.02.5, payable in equal consecutive monthly installments, in advance [if there will be a CPI adjustment, add “all as adjusted under Section 3.02”] without deduction, offset, recoupment or counterclaim, invoicing or prior notification, on or before the first day of each and every calendar month during the term of this Lease; provided, however, that (a) Annual Base Rent shall be pro-rated for any Lease Year greater or less than 12 calendar months; (b) if the Rent Commencement Date shall be a day other than the first day of a calendar month or the Expiration Date shall be a day other than the last day of a calendar month, the installment of Base Rent for such first or last fractional month shall be prorated on the basis of the number of days during the month this Lease was in effect in relation to the total number of days in such month; and (c) Tenant shall pay the first installment of Base Rent upon execution of this Lease.

C. Escalations.

Adjustments in the fixed rent can be in pre-determined amounts, calculated according to changes in the CPI, or a combination of the two. A simple way to draft the pre-determined increases is:

§ 1.02.5 “Base Rent” means the following amounts per annum, payable in monthly installments as follows:

<i>Lease Year</i>	<i>Annual Base Rent</i>	<i>Payable in Monthly Installments of:</i>
1	\$218,100	\$18,175
2	\$223,440	\$18,620
3	\$228,780	\$19,065
4	\$234,120	\$19,510
5	\$239,460	\$19,995
6	\$244,800	\$20,400

D. *CPI Clauses Require Greater Care.*

Be sure to:

1. Specify which CPI you are using (e.g., all urban wage earners, all urban consumers, etc.). See [http:// www.bls.gov/cpi/](http://www.bls.gov/cpi/);
2. Reserve the landlord's right to substitute another index if the specified CPI is discontinued or modified;
3. State that the CPI adjustment will not result in a rent decrease; and
4. Remember that the CPI is published two months in arrears; pick a base index and a current index with enough lead time to have the new data available when needed.

E. *Predetermined Increase with CPI Increase.*

The following example combines a pre-determined increase with a CPI increase:

3.02—Annual Rental Adjustment. As soon as practicable before the second Lease Year and each Lease Year thereafter, Landlord will notify Tenant of the adjusted Base Rent for the new Lease Year. Delay or failure on the part of Landlord shall not excuse Tenant from paying the adjusted Base Rent as and when due.

3.02.1. "Adjusted Base Rent" means, for each Lease Year an amount equal to the annual sum specified in Section 1.02.5, multiplied by the Adjustment Factor, but in no event less than the adjusted Annual Base Rent for the preceding year. Adjusted Base Rent shall be payable in monthly installments equal to the amount specified in Section 1.02.5, multiplied by the Adjustment Factor, but in no event less than the installments for the preceding calendar year.

3.02.2. "Adjustment Factor" means a fraction (but in no event less than one) equal to the Current Index divided by the Base Index.

3.02.3 "Index" means the Consumer Price Index for all items for all urban wage earners, all U.S. Cities, from 1982-84, or, if such index is discontinued or modified, such comparable substitute index as Landlord may reasonably designate.

3.02.4 "Base Index" means the Index for the month of [insert name of third full month immediately preceding the Commencement Date; e.g., if the Commencement Date is September 1, 2020, insert May, 2020].

3.02.5 “Current Index” means, for any Lease Year, the Index for the third full month immediately preceding the commencement of the Lease Year.

F. Long-Term Leases.

Consider using leasehold appraisals as benchmark in longer-term leases.

G. Retail Leases.

Retail leases typically require the tenant to pay percentage rent based on gross sales from the premises once such sales exceed a given threshold (often called the breakpoint). See “Percentage Rent-Retail (Landlord)” clause included in the attached Exhibit C. If the breakpoint divided by the sales percentage would yield the minimum rent, it is a “natural” breakpoint. The front end should state the percentage of sales and the method of determining percentage rent.

1. If the lease uses a fixed breakpoint, the lease should set forth a method to prorate the breakpoint for partial years and for periods when tenant is closed due to damage, destruction, etc.
2. A better method is not to state the breakpoint at all but describe the percentage rent as “the amount by which *x percent* of Tenant’s Gross Sales per calendar year exceeds Minimum Rent for such calendar year.” Because minimum rent is typically prorated for a partial year and abated when the premises cannot be operated due to casualty damage, this method avoids the need for prorating the breakpoint.
3. Some leases also decrease the breakpoint for any period when tenant is violating its covenant of continuous operation. If the lease defines the percentage rent without using a breakpoint, be sure to address the method for adjusting percentage rent.
4. When is percentage rent paid? Some leases require estimated monthly (or quarterly or semiannual) payments, with an annual adjustment. This method may require the tenant to grant the landlord an interest-free loan. Also, it may pose unforeseen hardship on unwary retailers opening immediately prior to the November-December holiday season. Perhaps the fairest method is to require monthly payments starting in the month in which gross sales reach the level at which percentage rent becomes due.
5. The sales percentage varies by type of store.
6. Not all sales will be included as part of gross sales. Most leases exclude returns and exchanges, merchandise returned to suppliers and vendors, and sales at a discount to employees. Tenants may want to exclude sales by phone, mail, catalogue, and Internet; landlords will try to include these items. Landlords may attempt to cap some or all of these exclusions. Other carve-outs will depend on the tenant’s industry, and will typically exclude low-markup sales, where the percentage rent may well equal or exceed tenant’s profit on the sale. See sample clause (“Exclusions from Gross Sales-Tenant”) in attached Exhibit C.

VIII. Deposits and Other Security

Commercial leases are not governed by the Ohio Landlord Tenant Act, Ohio Rev. Code § 5321. Parties to a commercial lease are free to bargain for whatever security deposit they believe is appropriate (or not deposit at all), without triggering a statutory requirement to pay interest.

- A. Unlike residential landlords, commercial landlords are not responsible for the return of a security deposit collected by a prior owner. The obligation to return the deposit does not run with the land, nor with the receipt of the deposit, but can be assumed by contract. Tenants may want to resist lease boilerplate, which automatically releases the landlord from liability for return if the property is sold.
- B. Case law suggests that (in the absence of a contrary lease provision), the original landlord remains responsible to return the deposit, as pledgee and not as lessor. *Tuteur v. P&F Enters., Inc.*, 21 Ohio App. 2d 122, 50 Ohio Op. 2d 219, 255 N.E.2d 284 (8th Dist. Cuyahoga Cty. 1970).
- C. From a landlord's perspective, security deposit provisions should:
 - 1. Permit the landlord to commingle the security deposit with other funds.
 - 2. Require the tenant to immediately restore the deposit if depleted due to landlord application to payment of the tenant's obligations.
 - 3. Discharge the landlord from any duty to return the deposit upon sale or conveyance of the property, to the extent that the deposit is paid or credited to the new owner.
 - 4. Address changes in amount, if any. E.g., if the deposit is more than one month's rent, will the lease permit the tenant to reduce the deposit over time if there is no default? If rent escalates, should the tenant be required to increase the deposit?
- D. If the tenant's credit is particularly weak, the landlord may want to require additional security in the form of a guaranty or a letter of credit (discussed below). If the tenant is a subsidiary or affiliate of a larger entity, consider whether a guaranty from the parent entity should be required. If the tenant is a partnership, LLC, or closely held corporation, consider whether guaranties from the partners, members, or shareholders should be required. Any guaranty should be drafted with same care as a loan guaranty.
 - 1. Recite that the guaranty is an inducement.
 - 2. Insist on guaranty of payment and performance, not merely of collection.
 - 3. Include waiver of the typical suretyship defenses, including a few that are particular to leases: assignment or subletting (including later reassignments and the releases of any assignors or assignees); relocation, expansion, or reduction of the premises; renewals or extensions of the lease term; and lease amendments. State that none of these events will release the guarantor, and that the guarantor's obligations continue to apply to the lease as so assigned, amended, etc.

4. Execute with the same care and attention as the lease itself, including, if the guarantor is not an individual, verification of the name, organizational structure, and authority of the signor.
 5. If the guarantor is not the parent organization of the tenant, the guarantor may want to limit the guaranty to the original tenor of the lease and may want to limit either the maximum exposure under the guaranty, the term of the guaranty, or both. Similarly, the landlord will want the guarantee to contain a waiver of all notices, whereas a non-parent guarantor will want copies of all notices under the lease, or at least all notices of default.
- E. If there is a letter of credit (LOC) in lieu of or in addition to the deposit:
1. Lease should require tenant to increase face amount of LOC in advance of any rent escalations. Allow landlord to draw down the entire amount if increased LOC is not delivered 30 days before escalation.
 2. Require that expiry date be at least 90 days after the lease term ends to allow for payment of unpaid taxes, repair and restoration costs, or other obligations that may survive the term expiration.
 3. Consider an evergreen clause—automatic renewal unless the issuer notifies the landlord of nonrenewal at least 30 days before the rollover date.
 4. Lease should permit LOC draw if renewal LOC is not delivered at least 30 days before expiry or if notice of nonrenewal is received.
 5. The lease should specify that the LOC be:
 - a. Non-revocable;
 - b. Fully transferable to any successor landlord at the expense of the tenant and preferably without requirement for presentation of the original (However, the bank may insist on presentation.);
 - c. Presentable in the city where the premises are located;
 - d. Drafted so as to permit partial draws and permit landlord to draw the full remaining amount if the tenant fails to restore the LOC to its prior amount within a very short specified time following each and every draw;
 - e. Non-documentary;
 I.e., require that no drafts, certificates, or other documents need be presented by the landlord other than a statement to the drawee purportedly executed by an officer or authorized employee or agent of landlord and stating that landlord is entitled to draw the requested sum in accordance with the provisions of the lease. Do *not* agree to have the LOC quote any specific form of the statement and do not agree to the language of the statement appearing in quotation marks or distinctive typeface. Otherwise,

the bank may try to assert a technical defense if the landlord's actual statement varies. Even if the defense fails, there will be unnecessary delay and expense;

- f. Payable within two business days of draw (UCC and various LOC protocols otherwise allow up to seven business days.);
- g. Governed by the International Standby Practices 1998 (ICC Publication No. 590), rather than by the Uniform Commercial Practices, which are less favorable to the beneficiary; and
- h. Optional (nice if you can get it):
 - i. Payable without requiring draws to be noted on the LOC. (But be prepared—many banks refuse to issue an LOC in that form); and
 - ii. Expressly permit facsimile presentments and copies of the draw requests. (Not possible if the original must be presented.)

IX. Taxes, Utilities, Maintenance, Repairs, and Services

In a full-service lease, these expenses are paid by the landlord. In a net lease, these expenses are passed along to the tenant in varying degrees. In retail leases and industrial leases, the entire cost is typically passed through to the tenant. Office leases may follow that approach, but more typically state a base year or base amount and require the tenant to pay its *pro-rata* share of increases over that amount. (Oddly enough, the leases never seem to credit the tenant with a share of any decreases.)

A. Tenant's Share of Expenses.

Tenant's share is often expressed as a percentage of the leasable square footage of the premises as against other leasable square footage in the building or project. This can at times be unfair to the landlord if the building is not fully occupied. Some costs (e.g., taxes, insurance) do not vary with occupancy, but others do. Just because the building is half occupied is no reason the tenants should absorb only half the costs of cleaning the corridors and offices. For that reason, office leases sometimes contain a clause adjusting the tenant's share of variable costs when the building is not fully occupied, e.g.:

During any calendar year (or portion thereof) in which less than all of the total leasable square footage of the Building is leased, Landlord may adjust those Operating Expenses which vary with level of occupancy of the Building for that calendar year to reflect what those Operating Expenses would have been had the Building been fully leased.

Shopping center leases address tenant's share differently than office or industrial leases.

1. The tenant should attempt to have its share of expenses expressed as a fraction of the gross leasable area (GLA), which places the risk of vacancy on the landlord.

2. The landlord may prefer to allocate the expenses according to tenant's share of gross occupied leased area (GOLA), which shifts some of the risk of vacancy to the tenant. If the lease uses GOLA rather than GLA, the tenant should try to negotiate a limit so that if occupancy dips below a specified level, the tenant's share is calculated as though that occupancy level had been met.
3. Whether the lease uses GLA or GOLA, the denominator is often based on in-line space only, deducting the square footage of any outparcels and any space leased to anchor tenants. If the lease does so and you are representing an inline tenant, make sure that the costs paid by the excluded tenants are deducted as well.
4. Consider how operating expenses (or in a retail lease, CAM) are defined and, from a tenant's perspective, possible exclusions—e.g., capital expenditures, insurance proceeds and other reimbursements received by landlord. See "Exclusions from Operating Expenses (Tenant's Version)" and "Exclusions from CAM Costs (Tenant)" in the sample clauses attached as part of Exhibit C. Also consider whether the operating expenses should be "grossed up" to reflect a full building. See definition of "Operating Expenses" in the "Rent and Additional Rent (Office)" clause in the attached Exhibit C for an example of a "gross-up" provision.
5. Depending on the duration/size of the lease, a tenant may want to ask for the right to audit the landlord's book and records regarding operating expenses or CAM. See "Tenant's Audit Right" clause in attached Exhibit C.

B. Taxes.

Ohio real estate taxes are paid in arrears. Make sure to provide that the tenant will be responsible for those tax payments coming due during the term of the lease and not simply taxes that first become a lien during the term.

1. Special assessments are often levied to pay for improvements benefiting the property. Tenants will often negotiate to exclude special assessments that became a lien before the term of the lease. The tenant will also want to make sure that if an assessment is payable in installments at the option of the landlord, the tenant's responsibility will be determined as though the landlord had elected to pay the assessments in installments so that the tenant will be responsible for only those assessments payable during the term of the lease.
2. There are many approaches to tax reductions and refunds. None of them is completely satisfactory.
3. Consider how real estate taxes are defined and, from a tenant's perspective, possible exclusions, e.g., income taxes, inheritance taxes. See "Items Included in Operating Expenses" which is part of the "Rent and Additional Rent (Office)" clause in the attached Exhibit C.

C. *Cost of Maintenance, Repairs, and Services.*

A sophisticated tenant will want to negotiate certain exclusions from operating costs. One common exclusion is capital expenditures. The parties should state what they intend by that term, and the tenant should consider agreeing that each year's operating costs will include a portion of the capital expenditure necessary to amortize the improvements or expenditure, on a straight-line basis, over its useful life. The landlord may want the right to treat capital expenditures under a given amount as current expenses in the year incurred.

D. *Lease Requirements.*

Shopping center leases may require the tenant to become and remain a dues-paying member of the merchants' association, contribute to a promotional fund, or engage in a given amount of advertising.

E. *Utilities.*

The simplest approach calls for the tenant to purchase the utilities directly from the public utility, with a direct meter. It is not illegal for the landlord to make a profit reselling utilities to its tenants. *Shopping Ctrs. Ass'n v. Public Utils. Comm'n*, 3 Ohio St. 2d 1, 32 Ohio Op. 2d 1, 208 N.E.2d 923 (1965); *Jonas v. Swetland Co.*, 119 Ohio St. 12, 6 Ohio L. Abs. 488, 162 N.E. 45 (1928); *Park Centre Party Ctr. v. Zell*, 1994 WL 189547 (Ohio Ct. App. 8th Dist. Cuyahoga Cty. 1994). If the landlord purchases the utilities, the premises may be submetered or the charge may be based on a flat amount per square foot, on estimated usage based on connected load or on some other measure, or some other form of educated guess. If the charges are based on landlord's estimate, the tenant should reserve the right to have its own engineer review and confirm the accuracy of the estimate.

1. Regardless of who provides the utilities, from a landlord's perspective, consider providing that the landlord will not be liable for interruptions resulting from causes beyond the landlord's control and to limit liability even for those interruptions that were caused by the landlord.
2. From a tenant's perspective, consider adding remedies, e.g., rent abatement or even termination, from protracted utility interruptions not cause by the tenant.
3. Though beyond the scope of today's seminar, note that any attempt by the landlord to restrict the tenant's choice of telephone or internet service providers may violate federal law or FCC regulations.
4. From a tenant's perspective, if the lease does not make clear whether the utilities will be separately metered, ask.

X. Use and Occupancy

A. *Permitted Use.*

The lease should specify the purpose for which the tenant is permitted to use the premises. Use clauses in office buildings are typically brief. If the premises are to be used for general office purposes; the type of business seldom makes much difference to the landlord. The landlord may want to restrict use as a medical office or other facility with heightened ADA requirements, uses that generate excessive visitor traffic or undesirable visitors, or use as a government office.

1. Use clauses in retail leases, and particularly shopping center leases, are typically more detailed and restrictive.
2. For an excellent discussion of use clauses in retail leases, see Chapter 9 of E. Halper, *Shopping Center and Store Leases* (Law Journal Press, 2001).

B. *Continuous Operation.*

A covenant that “Tenant shall use the Premises to operate a retail store for the sale and display of X” is a limitation on tenant’s use of the premises and not an affirmative covenant to actually operate the store. If the landlord actually wants to require the tenant to operate, the lease should include a covenant to continuously operate the premises for the purpose permitted by the lease. A well-drafted provision will also address the required hours of operation, staffing, stocking, and efforts to maximize sales.

C. *Environmental.*

The lease should require the tenant to comply with all environmental laws. The tenant will want to be excused from responsibility for any preexisting conditions and any conditions caused by the landlord during the term of the lease. Neither party will want to be responsible for conditions caused during the term of the lease by third parties. Office leases often have more cursory environmental provisions than leases for retail or industrial property. If the tenant’s operation involves significant environmental risk (e.g., a medical office, industrial site, or dry-cleaning plant), greater detail may be justified.

D. *Americans with Disabilities Act.*

Leases that specifically address the ADA typically require the landlord to comply with the ADA in all of the common areas and require the tenant to comply with the ADA within its own premises. The tenant’s type of use may trigger additional ADA requirements for the landlord. In addition, the landlord may require the tenant to pay the costs of any changes required to the path of travel in the common areas as a result of tenant’s use or alterations.

E. *Legal Compliance Generally.*

The landlord will want to require the tenant to comply with all legal requirements affecting use of the premises. The tenant will want a similar obligation from the landlord concerning the common areas.

1. The tenant will also want to be excused from the consequences of preexisting violations or violations that are caused by third parties not subject to tenant's control.
2. If the tenant is not leasing the entire building, the tenant may also want to be excused from curing violations if the cure would require structural repairs or alteration or repair to areas to which tenant does not have access under its lease. The landlord may be willing to excuse the tenant from curing those violations provided that the tenant reimburses landlord for the cost of cure, plus an administrative charge.
3. Specify who is responsible for complying with new laws or regulations that are enacted during the term of the lease. Operating costs typically include the landlord's cost of complying with new laws, passing the financial risk to the tenant. If alterations are required, the tenant will want to be sure that it is responsible for making/paying for only those alterations required by the specific nature of tenant's use and not general requirements, e.g., additional sprinklers required because of the hazards arising from tenant's use as opposed to a change in code requirements applicable to all office buildings of a particular class.

F. *Personal Property and Fixtures.*

The landlord will want all of the tenant's improvements to be deemed a part of the premises. The landlord may also want the right to require the tenant to remove any alterations or fixtures at the end of the term if the landlord so requests. The tenant may want to negotiate for a requirement that the landlord notify tenant at the time landlord consents to the alteration if removal will be required.

1. The tenant will want the right to remove its trade fixtures at any time and will want to be advised at the time fixtures or alterations are planned as to whether the tenant will be required to remove them. The landlord will want to require the tenant to pay for any damage resulting during the removal of its trade fixtures and will want to prohibit removal of anything that would necessarily injure the premises by its removal (e.g., HVAC equipment, plumbing fixtures). *See Cambridge Co., Ltd. v. Telsat*, 2008 WL 649582, 2008-Ohio-1056 (Summit Cty. App. 9th Dist).
2. From a landlord's perspective, the lease should make tenant responsible for loss or damage to its personal property, regardless of how caused. Making an exception for the landlord's negligence simply increases the insurance cost for all concerned, with no benefit to the tenant. However, the tenant may want to consider making landlord responsible for loss/damage resulting from more egregious acts of landlord misconduct, e.g., gross negligence, intentional misconduct.

XI. Assignment and Subletting

An assignment transfers the tenant's entire interest in the lease. Under a sublease, the tenant retains part of the premises, part of the remaining term, or both. An assignment creates privity of estate between the landlord and the assignee, but not privity of contract. The sublease creates neither.

A. Restrictions.

Restrictions against assignment or subletting are restraints on alienation and are construed narrowly. Unless the lease expressly restricts assigning or subletting, the tenant needs no consent from the landlord.

1. Transfers of the stock ownership of a corporate tenant or the equity in a partnership or LLC do not violate a restriction on assignment or subletting, nor do mergers or consolidations on the part of the tenant. From a landlord's perspective, a well-drafted assignment clause will restrict those transactions as well. However, the tenant may want to resist certain of those restrictions—e.g., should a single landlord have veto power over mergers/consolidations involving the tenant?
2. The lease should state that consent to one assignment does not constitute a consent to later assignments, so as to avoid the Rule in *Dumpro's Case*, 4 Coke 1119b, 76 Eng. Rep. 1110 (1578), that covenants against assignment are personal and do not restrict further assignments by the assignee.

B. Liability.

Absent an express release from the landlord, the assigning tenant remains liable as a surety for the assignee's performance of the lease. *Gholson v. Savin*, 137 Ohio St. 551, 19 Ohio Op. 309, 31 N.E.2d 858, 139 A.L.R. 75 (1941). This part is frequently misunderstood by tenant clients. If you want a release, you have to negotiate for one.

C. Permitted Transfers.

Tenant may want a provision that no consent is needed for an assignment or sublease to a subsidiary or other affiliate or in connection with the sale of all or a part of the tenant's business. The landlord will want to include appropriate restrictions on these transactions.

D. Additional Items to Include.

Other bargaining points include the degree of the landlord's discretion, the amount of notice that the tenant must give in its request for consent, requirements that the tenant pay the landlord's legal fees in connection with a request for consent, whether a request for consent triggers an option on the landlord's part to terminate the lease and recapture the premises, and who keeps any profit from the assignment or subletting.

XII. Insurance and Indemnity

The lease should specify what insurance the tenant must carry and may require the landlord to carry insurance or may permit the landlord to carry such insurance as the landlord deems necessary. *Make sure to review all insurance requirements with your client's insurance agent and your client's risk management department.* Most lawyers do not keep up to date on changes in the insurance market, which can lead to embarrassment when asking for a form of policy that has been off the market for a decade or so. For large tenants, it is particularly important that the insurance requirements in a single lease do not alter/interfere with their entire insurance program.

A. Indemnity.

1. Should also be reviewed and approved by your client's risk management department and insurance agent.
2. If possible, do not agree to indemnify for anything that your client can not control, anything that your client cannot insure, or anything that is under the other side's control or should logically be the other side's risk.
3. Remember, however, in a multi-tenant project, each tenant is paying a share of the landlord's insurance premiums. Shifting the indemnity risk to the landlord raises everyone's operating costs. Many landlords flatly refuse to indemnify the tenant.

B. Mutual Waiver of Claims and Subrogation Rights.

Provide for a mutual waiver of claims and subrogation rights for insured or insurable damage caused by one party to the property to the other. This is a critical (though often overlooked) issue from a tenant's perspective, particularly for "deep pocket" tenants. You do not want to become the insurer of last resort for the landlord's building.

1. The waiver should waive all claims covered by insurance actually carried by the injured party, all claims that could be covered by the policies required by the lease, and all claims that could be covered by a specified form of policy (e.g., Special Form/All Risk). Beware of waivers that are limited to damage insured "by any policy of insurance required to be carried by this lease."
 - a. Creates risk of direct claim by a self-insured party if lease permits self-insurance or does not require insurance.
 - b. Creates risk of subrogation claim by the underwriter if the other party carries insurance beyond the required type or amount.
2. Waivers from or in favor of other tenants.

XIII. Leasing Space Under Construction

A. *Tenant Improvements and Alterations.*

Landlord will want the right to review and approve all plans and specifications and contractors. Landlords of large buildings may require a labor harmony clause. Tenant will want the landlord to be reasonable and may bargain for consent to be presumed unless landlord delivers reasonable objections in writing within a given time.

B. *Restriction of Alterations.*

Landlord will probably want the right to restrict the making of alterations and should reserve sole discretion over any proposed alterations that affect structural elements, common areas, the exterior of the building, landlord's operating costs, the HVAC, utility, mechanical, or other common systems, or compliance with any mortgage, insurance, or other legal requirements.

C. *Landlord's Review/Approval Statement.*

For both the initial tenant improvements and later alterations, the lease should state that landlord's review of the tenant's plans and specifications is for landlord's sole protection and that landlord's approval does not constitute a warranty or representation that the proposed improvements comply with legal, insurance, or safety requirements, or will be adequate for tenant's purposes, nor that the plans are adequate for constructing the improvements.

D. *Landlord Improvements.*

The lease should state that the landlord is not required to make any improvements except as expressly stated in the lease. The lease may call for the space to be delivered "as is," or in turnkey condition (fully ready for tenant's occupancy), or anywhere in between—often drafted to call for delivery "as is" with the exception of work described in an exhibit.

1. *Standard Condition/Improvements.*

If the lease refers to building standard condition or building standard improvements, make sure to specify what those standards are and make sure your client understands them.

2. *Description of Landlord's Work.*

The lease should describe how substantial completion of the landlord's work is determined (architect's certificate, temporary or permanent certificate of occupancy, other specific criteria, etc.), how the commencement date will be affected by any delay in completing the landlord improvements, and whether there are any penalties (other than delay in the commencement date) for delay.

3. Coordination of Work.

If landlord and tenant are both going to be performing work, tenant's deadline normally starts running when the landlord delivers possession of the space with landlord's work completed sufficiently to allow tenant to start its own work without undue interference. Be sure to address coordination of work and the consequence of one party causing a delay for the other.

4. Additional Insurance.

In addition to normal insurance requirements, the lease should require specific additional insurance while the tenant is performing construction and require that certificates or policies of insurance be delivered to the landlord.

5. Mechanics' Liens.

Depending on the type of project, the landlord may want to prohibit the tenant from filing a notice of commencement under Ohio Rev. Code § 311.04. The lease should require that any notice of commencement disclose that the tenant is the lessee and not the fee owner, and that any liens will be against the lessee's interest only. The landlord may or may not want to require the tenant to provide copies of any notices of furnishing under Ohio Rev. Code § 1311.05. The lease should prohibit the tenant from permitting any mechanic's lien to be filed, require the tenant to discharge any lien within a specified short deadline, and reserve the landlord's right to pay any lien claim that is not discharged within that deadline, without need to investigate the validity of the claim, at tenant's expense plus appropriate interest and an appropriate administrative charge.

XIV. Default and Termination Clauses

Leases typically permit landlord to terminate the lease for any default by the tenant, whether or not material. Note, however, that a court of equity may refuse to permit termination for nonmaterial defaults. *Joseph J. Freed & Assoc., Inc. v. Cassinelli Apparel Corp.*, 23 Ohio St. 3d 94, 491 N.E.2d 1109 (1986); *Takis, LLC v. C.D. Morelock Props., Inc.*, 180 Ohio App. 3d 243, 905 N.E.2d 204, 2008-Ohio-6676 (Franklin Cty. App. 10th Dist. 2008), citing *David v. Edwood Dev. Co.*, 252, 2000 WL 46107 (Summit Cty. App. 9th Dist. 2000) quoting *Gorsuch Homes, Inc. v. Wooten*, 73 Ohio App. 3d 426, 435, 597 N.E.2d 554 (Clark Cty. 2d Dist. 1992); *Pepper Pike Props. Ltd. P'ship v. Wilson*, 2002-Ohio-331, 2002 WL 199902 (Cuyahoga Cty. App. 8th Dist. 2002).

A. Notice and Cure.

Financial defaults typically turn on the question of notice and opportunity to cure. Landlord-oriented leases often contain no opportunity to cure the late payment of fixed rent. Tenants want the opportunity to cure within a given amount of time after written notice.

1. The landlord expects the rent to be paid on time so that the mortgage and other expenses can be paid. It costs money to prepare and send notices of nonpayment. It may take several days for the notices to go out. The landlord loses the use of its rent funds while the notices are being sent and the grace period is running. An unscrupulous tenant may deliberately wait for the notice before paying its rent, in order to enjoy the use of the funds. Five to 15 days of interest adds up when you multiply it by hundreds of premises.
2. The tenant does not want to lose the lease and incur major liability just because a clerical employee was sick or forgot to mail a check or the check gets lost in the mail. Even if the tenant makes sure the rent was mailed, the postal service sometimes makes mistakes, and the tenant will not know the rent did not arrive until the landlord notifies the tenant of that fact. Query—does the common availability of automatic payments mechanisms and electronic fund transfers undercut the tenant's traditional position?
3. Possible compromises. A grace period without notice of nonpayment does not solve either party's problem. Instead:
 - a. Provide that tenant can cure nonpayment within a short period (typically three to five days) after written notice from landlord. Tenant cannot complain about the extra cost of issuing a check immediately and sending it by overnight courier;
 - b. Even if cured, landlord should be entitled to late payment fee to cover cost of sending notice, and interest on the loss of funds from the date originally due; and
 - c. Consider limiting the number of late notices, whereby the landlord is required to give, in any calendar year; after the limit is reached, any payment not made by the first (or perhaps the fifth) of the month is a default.
4. Special payments (tax or operating expense adjustments, reimbursement of other landlord expenses) may justify more time to pay. Unlike fixed rent, the tenant does not know until the invoice arrives that these expenses are coming. Common to allow 30 days after invoice for payment of additional rent so that the tenant will have one complete bill paying cycle.

B. Curable Nonfinancial Defaults.

Leases often allow anywhere from 15 to 30 days after written notice in which to cure failure to perform non-monetary obligations other than certain specified non-curable defaults as discussed below.

1. Tenant will want the lease to grant an automatic extension to cure failures that cannot reasonably be cured within the specified time, so long as tenant begins the cure within the specified time.

2. The landlord should agree to this, but should insist on a provision that the extended cure time applies only to failures that are capable of being cured, and only if the tenant prosecutes the cure continuously in good faith to completion within a reasonable time.
3. The landlord may also want to specify an outside limit (e.g., 90 days) for the cure period and may want the right to deny an extended cure for defaults that expose the landlord to risk of forfeiture or civil or criminal liability, or that violate the terms of landlord's insurance policies or mortgage.

C. *Non-Curable Defaults.*

Non-curable defaults will vary from lease to lease. Common examples are failure to open a restaurant or retail store for business or to operate during the required hours, failure to provide insurance as and when required by the lease, misrepresentations or false warranties, and assigning or subletting without consent. Make sure the lease is not ambiguous as to which defaults are curable.

D. *Insolvency.*

Insolvency defaults typically include the filing of a bankruptcy petition by or against the tenant, assignments for the benefit of creditors, dissolution, etc.

1. The tenant should negotiate for adequate time to obtain a dismissal of any involuntary petition, and should be careful about defaults such as "seeking or receiving the advantage or benefit of any insolvency or bankruptcy act"; make sure to insert the words "as debtor" or "except as creditor."
2. The landlord will want the cure time to be short (often unrealistically so), with an instant default if the tenant acquiesces in the petition, admits its material allegations, or fails to contest.
3. The landlord should remember that lease provisions creating an automatic default for the tenant's bankruptcy are not enforceable as a matter of federal bankruptcy law.

E. *Constructive Eviction/Covenant of Quiet Possession.*

The lease may be silent as to the landlord's default, or may provide that the landlord is not in default absent notice and some opportunity to cure.

1. Constructive eviction results when the landlord breaches the covenant of quiet enjoyment to the extent that tenant is deprived of the quiet possession of the premises.
2. The covenant of quiet possession does not protect the tenant from (a) economic changes, acts of other tenants or occupants, or any other condition that is not caused by the landlord or (b) depending upon the wording of the quiet enjoyment clause, the landlord's failure of title.
3. In order to show constructive eviction, the tenant must actually vacate and surrender possession.

XV. Remedies

A. Damages for loss of Rent.

B. Acceleration of Rent.

Acceleration of rent if provided by the lease, but courts can decline to award if the acceleration creates a penalty. When calculating accelerated rent, the future rent must be discounted to present value. *Industrial Leasing Corp. v. Garbage Trash Servs., Inc.*, No. 85-AP-943 (Ohio Ct. App 10th Dist. Franklin Cty., 6-26-86); *Castle Hill Holdings, VII, LLC v. Midland Food Servs., II, LLC*, 2005-Ohio-1773, 2005 WL 858174 (Ohio Ct. App. 5th Dist. Tuscarawas Cty. 2005). From a tenant's perspective, rent acceleration clauses can provide the landlord with considerable leverage in a tenant default scenario and should be resisted in most cases.

C. Other Damages.

Other damages may include brokers fees, the cost of preparing the space for a new tenant (cleaning, painting, remodeling, or even altering), and the difference between the agreed rent and the net proceeds of reletting.

D. Mitigation.

Landlords ordinarily must try to mitigate their damages, but the duty to mitigate can be waived in a commercial lease. *Frenchtown Square P'ship v. Lemstone, Inc.*, 99 Ohio St. 3d 254, 2003-Ohio-3648, 791 N.E.2d 417 (2003); *New Towne L.P. v. Pier 1 Imports (U.S.), Inc.*, 113 Ohio App. 3d 104, 680 N.E.2d 644 (6th Dist. Lucas Cty. 1996); *South Towne Centre, Ltd. v. Carlson Catalog Showrooms, Inc.*, 1988 WL 37487 (Ohio Ct. App. 2d Dist. Montgomery Cty. 1988), *cause dismissed*, 37 Ohio St. 3d 716, 532 N.E.2d 765 (1988).

E. Self-Help Eviction If No Breach of Peace Occurs.

See Northfield Park Assoc. v. Northeast Ohio Harness, 36 Ohio App. 3d, 14, 21, 521 N.E.2d 466 (8th Dist. Cuyahoga Cty. 1987)—lessor's demand for possession made during entry with armed guards held not to be a breach of the peace where no violence, injury, or resistance occurred.

F. Late Fees and Interest.

Late fees and interest compensate the landlord for the cost of late payment and serve as a deterrent to the tenant. When rent is late, landlord must divert staff time to detect the delinquency, prepare and send a late payment notice, and monitor the payment, and it loses use of the rent funds. These expenses are incurred even if the default is eventually cured, although some leases include a grace period before late fees are incurred, or provide that there is no late payment fee for one or two late payments a year if the delinquency is cured promptly. Commercial leases are not typically subject to civil usury limits in Ohio.

G. Attorneys' Fees.

Ohio Rev. Code § 1301.21 validates attorney fee provisions in commercial contracts of indebtedness, including leases, if the principal amount when owed the time the contract was entered into was more than \$100,000. What does this mean in the context of a lease? Total rent over the entire term, whether or not then due? Application to preexisting leases?

1. Opinions upholding fee shifting clauses in a commercial lease without reference to § 1301.21: *Yoder v. Hurst*, 2007-Ohio-4861, 2007 WL 2729423 (Franklin Cty. App. 10th Dist.), (trial court has broad discretion in determining the reasonableness of attorneys' fees); *Cambridge Cty., Ltd. v. Telsat*, 2008 WL 649582, 2008-Ohio-1056 (Summit Cty. App. 9th Dist), citing *Nottingdale Home Owners Ass'n, Inc. v. Darby*, 33 Ohio St. 3d 32, 514 N.E.2d 702(1987) and *Keal v. Day*, 164 Ohio App. 3d 21, 840 N.E.2d 1139, 2005-Ohio-5551 (Hamilton Cty. App. 1st Dist.) (commercial lease).
2. Right to collect attorneys' fees can be lost by entering into a new lease with the losing party, even if the new lease is entered into pursuant to a settlement agreement that expressly preserves any claims for attorneys' fees. *Keal v. Day*, *supra*.
3. Tenant's lawyer should make sure that the attorney fee clause is reciprocal and applies only to matters actually litigated.

XVI. Boilerplate Deserves Attention

A. Holdover.

Holdover tenants are considered tenants at sufferance at common law. Most leases give the landlord the option to treat the holdover as a lease from month to month at an increased rent. A holdover rent that was double the original fixed rent was upheld as not being a penalty. *Brunswick Ltd. P'ship v. Feudo et al.*, 171 Ohio App. 3d 369, 2007-Ohio-2163, 870 N.E.2d 804 (11th Dist., Lake Cty. 2007). When a tenant holds over for less than a full month, the wording of the holdover clause will determine whether the holdover rent is payable for only the actual duration of the holdover, or for the entire month. *Brunswick Ltd. P'ship v. Feudo*, *supra*. A tenant who stays in possession after the lease is terminated for default does not become a holdover tenant. *The Strip Delaware, LLC v. Landry's Rest., Inc.*, 2009-Ohio-1106, 2009 WL 638516 (Stark Cty. App. 5th Dist. 2009), *entered nunc pro tunc*, 2009-Ohio-1869, 2009 WL 1067077 (Stark Cty. App. 5th Dist. 2009).

B. Financing.

The landlord has probably mortgaged the premises, and the tenant's lawyer may want to consider obtaining a title search. In Ohio, a mortgage foreclosure *automatically* terminates any lease which is subordinate to the mortgage. *New York Life Ins. v. Simplex Products Corp.*, 135 Ohio St. 501, 504, 21 N.E. 2d 585

(1939), *Hembree v. Mid-America Fed. Sav. & Loan Ass'n*, 64 Ohio App. 3d 144, 153-55, 580 N.E. 2d 1103 (2d Dist. Montgomery Cty., 1989) For this reason, the tenant will want a subordination, non-disturbance, and attornment agreement (SNDA) as a condition to the tenant's obligations under the lease and will want the right to terminate the lease if the SNDA is not delivered by a given deadline. Depending on the landlord's relationship with its lender and the importance of this lease to the overall project, the landlord may not be willing to condition the tenant's obligations upon delivering the SNDA. Instead, the landlord may agree only to use reasonable efforts to obtain the SNDA. For smaller tenants, the landlord may not even agree to do that much.

1. The SNDA.

- a. Subordinates tenant's leasehold interest to the mortgage (redundant in the case of an existing mortgage, but often still expected by the lender);
- b. Protects the tenant from loss of the lease if the mortgage is foreclosed;
- c. Assures the lender that the tenant will recognize the lender or purchaser at foreclosure sale as the new landlord; and
- d. Protects the new landlord from claims or defenses that the tenant had against the original landlord.
- e. Provides that the tenant will not be joined as a defendant in a foreclosure action with respect to the mortgage unless such joinder is required by law.

2. Subordination.

The landlord also needs the ability to refinance the project from time to time and cannot do so unless the tenant agrees that the lease will be subordinate to future mortgages. The lease may state that subordination is automatic or may condition subordination upon the future lender delivering an SNDA. If the subordination is automatic, the tenant should insist that the non-disturbance be automatic as well.

3. Battle of Forms.

Tenant should:

- a. Not settle for lender's offer not to disturb only the right of possession, or conditioning the non-disturbance on tenant's strict performance. Instead, insist on recognition of all of tenant's rights and interest under the lease so long as no event of default is continuing beyond any notice or cure period provided by the lease;

- b. Insist that landlord be party to any SNDA that calls for paying rent directly to lender upon demand; and
- c. Modify the severability clause of the SNDA—tenant’s obligation to subordinate should be dependent on enforceability of lender’s recognition obligations. See §§ 3.2 and 4.6 of attached Exhibit B.

C. *Estoppel Certificate.*

Even if the lease sets forth a laundry list of topics to be contained in the certificate, there is always a risk that a lender or buyer will require additional information. Add a catch-all at the end for “any additional matters that landlord may reasonably request.”

- 1. Since there may be no practical remedy for tenant’s failure to deliver the estoppel; consider granting the landlord a power of attorney to sign the certificate on behalf of the tenant if the certificate is not returned within the required time or after an additional notice period following the required time.
- 2. Tenant’s lawyer should find out how much time the client needs to process estoppel certificates and ensure that the lease grants adequate time. Make sure that your client understands the need to review the estoppels thoroughly, to correct any errors or insert any missing information, and to return them promptly.
- 3. If the lease is a major tenant asset, the tenant may also want the right to an estoppel certificate from the landlord.

D. *Landlord Exculpation.*

Exculpation of landlord is a legacy from the days before limited liability companies—clause limits tenant’s recourse against landlord to the landlord’s equity in the premises. Tenants in a multi-tenant project should not limit themselves to the landlord’s interest in the premises, but should instead broaden the clause to include the landlord’s interest in the entire project. Tenant may also want to specify that the landlord’s interest includes but is not limited to its interest in the rents, any title insurance proceeds (what if the property is actually owned by the Eastern Shawnee Tribe of Oklahoma?), any casualty insurance proceeds, and the proceeds of any available liability insurance policy.

E. *Force Majeure.*

The landlord’s form will probably give landlord the benefit of a *force majeure* defense, but not the tenant. The tenant will want the clause to be mutual. Possible compromises:

- 1. Keep the one-sided clause, but give the tenant an extension for curing certain defaults if *force majeure* prevents timely performance of the tenant’s obligation, as discussed above under defaults.
- 2. Make the *force majeure* clause reciprocal but clarify that it does not excuse the timely payment of rent or other financial obligations.

3. *Force majeure* considerations in view of COVID-19:
 - a. Two issues:
 - i. Whether existing lease clauses excuse rent payment/performance of other obligations by landlord or tenant because of COVID-19 and related shutdowns; and
 - ii. How should clauses for new leases be structured in view of continuing pandemic?
 - b. Analysis of existing leases.
 - i. Are pandemics included in the *force majeure* clause description of events/causes excusing performance?
 - ii. If pandemics are not referenced but clause includes “and any other similar event” (or the like), consider impact of *ejusdem generis*: how is a pandemic similar/dissimilar to the identified event/causes, e.g., fire, flood, labor shortages, etc.
 - iii. Does the clause apply if performance is not impossible but more difficult/risky, e.g., a voluntary decision to stop operating versus a government shutdown order? Does the affected party have an obligation to mitigate the effects of the pandemic to the extent possible/practicable?
 - iv. Does the clause exclude monetary obligations (most notably, payments of rent) from the excused obligations? Such carve outs are common and often cut both ways. For example, the landlord may be obligated to fund a tenant improvement allowance despite a COVID-19 shutdown.
 - v. Keep in mind that *force majeure* clauses potentially impact a range of obligations in addition to rent/other monetary obligations, e.g., construction of tenant improvements, common area services, and tenant operating covenants.
 - vi. Whether insurance coverage is available to offset the landlord’s lost rental income (or cover the tenant’s rent obligation) is a separate issue, but it may have a practical impact on the parties’ positions regarding the applicability of the *force majeure* clause.
 - c. Drafting/negotiating of new clauses.
 - i. The experts tell us that COVID-19 will be with us for a while. How should risks be allocated between the parties in view of that reality?
 - ii. How much discretion should be allowed to either party to voluntarily reduce/suspend operations because of COVID risks? How is the rent obligation affected (if at all) by a voluntary reduction/suspension?

- iii. We may see the emergence of stand-alone COVID-19 clauses in addition to the traditional *force majeure* clause

F. *Electronic Business Transactions.*

The lease should make it clear that the parties do not intend to contract electronically as to the lease nor any amendments or modifications. The Uniform Electronic Transactions Act (UETA, Ohio Rev. Code Chapter 1306) trumps the Statute of Frauds by permitting certain agreements to be formed by email or even by voice mail. UETA even makes provision for notarizing documents electronically. UETA does not apply unless the parties have agreed to transact business electronically, but that agreement can be inferred from the attendant facts and circumstances.

G. *Joint Preparation Clause.*

Leases are contracts; ambiguities will be construed against the drafter and the drafter's successor in interest. *Mapletown Foods, Inc. v. Mid-America Mgmt. Corp.*, 2007-Ohio-2767, 2007 WL 1643202 (Ohio Ct. App. 8th Dist. Cuyahoga Cty. 2007). Use of landlord's standard lease form is evidence that landlord drafted the ambiguous provision. *L&M of Stark Cty., Ltd. v. Lodano's Footwear, Inc.*, 2006-Ohio-5997, 2006 WL 3290797 (Stark Cty. App. 5th Dist. 2006). For this reason, landlord will want to include a clause providing that the lease is the joint product of the parties and/or negating the rule that the lease (or any provision thereof) is to be construed against the drafter.

H. *No Waiver Provisions.*

The lease will likely contain a clause providing there are no implied, continuing or nonwritten waivers, but remember that this clause can itself be waived orally or by conduct.

I. *Memorandum of Lease.*

Typically, both parties will want to keep the financial terms private, and will, therefore, include a prohibition against recording the lease. The tenant may want to record a memorandum of lease under Ohio Rev. Code § 5301.251. Doing so puts landlord at the risk of a cloud on the title if the parties are not on good terms when the lease ends. A landlord is likely to reject this request from anyone other than a major tenant. Even in that event, the landlord may want to take steps to ensure that it can file a notice of termination if the tenant fails to do so.

J. *Landlord's Lien.*

From a tenant's perspective, beware of blanket provisions imposing a lien in favor of the landlord on all of the tenant's inventory, furniture, fixtures and other personal property in the premises. Among other things, such provisions may violate prohibitions in loan documents regarding tenant's inventory, equipment or fixtures. There is no statutory landlord's lien in Ohio.

Exhibit A—Sample Commencement Date Agreement

COMMENCEMENT DATE AGREEMENT

THIS COMMENCEMENT DATE AGREEMENT is made the ____ day of _____, 2019, between <LANDLORD_NAME>, an Ohio limited liability company ("Landlord") and <TENANT_NAME>, an Ohio limited liability company ("Tenant").

BACKGROUND:

A. By Lease dated as of the __ day of _____, 2019 (the "Lease") between Landlord and Tenant, Landlord leased to Tenant and Tenant leased and took from Landlord, for the term and upon the terms and conditions therein set forth, certain premises located at _____, Columbus, Ohio.

B. The Lease provides that the parties shall execute a confirmation of the actual Commencement Date, Rent Commencement Date and Expiration Date (as those terms are defined in the Lease) when those dates have been determined.

NOW THEREFORE, Landlord and Tenant agree that the term of the Lease commenced on the ____ day of _____, 2019, the Rent Commencement Date is _____, 2019, and the term of the Lease shall end on _____, 20____, at 11:59 P.M., unless sooner terminated or extended as therein provided, and that the leasable area of the Premises is _____ +/- leasable square feet.

Tenant confirms that, except as expressly set forth below, (a) all improvements that Landlord is required to construct pursuant to the Lease have been substantially completed in accordance with the approved drawings, plans and specifications, (b) the Premises are in the condition required by the Lease, and (c) Landlord has performed all of its obligations under the Lease to the extent that performance is due.

EXCEPTIONS: (NONE, if nothing listed): NONE.

IN WITNESS WHEREOF, Landlord and Tenant have caused this certificate to be executed as of the day and year first above written.

LANDLORD: <LANDLORD_NAME> TENANT: <TENANT_NAME>

By: /s/ _____ By: /s/ _____

Name: _____ Name: _____

Its _____ Its _____

Exhibit B—Sample SNDA

(Tenant-oriented form)

THIS SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT is made and entered into as of the ____ day of _____, 20__ by and between _____, a _____ (“Lender”), and _____, a _____ (“Tenant”).

BACKGROUND:

- A. Tenant and _____, a _____ (“Landlord”) have entered into a certain Lease dated as of _____, 20__ (the “Lease”) pursuant to which Tenant has leased from Landlord certain premises located at _____, as more particularly described in the Lease (the “Premises”).
- B. Lender is the holder of that certain Open-end Mortgage, Security Agreement and Fixture Financing Statement dated as of _____ and recorded on _____, 20__ as Instrument _____ in the Recorder’s Office, _____ County, Ohio (the “Mortgage”) between Landlord and Lender.
- C. Lender and Tenant desire to evidence their understanding with respect to the Mortgage and the Lease.

NOW THEREFORE, Lender and Tenant agree as follows:

Section 1. Nondisturbance. So long as Tenant is not in default (beyond any period given Tenant under the Lease to cure such default) in the payment of rent or other sums payable by Tenant under the Lease or in the performance of any of the terms, covenants or conditions of the Lease on Tenant’s part to be performed, possession and right of use of the Premises and Tenant’s rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, shall not be diminished or interfered with by Lender; Lender will not disaffirm the Lease; Lender will recognize all restrictions imposed on the Project by the Lease; Lender will affirmatively recognize the validity of the Lease and Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant’s interest under the Lease. Notwithstanding anything to the contrary in the Mortgage, all insurance and condemnation proceeds or awards paid or payable with respect to the Premises and received by Lender or Landlord shall be made available by Lender to be held, applied and paid in the manner set forth in the Lease.

Section 2. Attornment.

2.1. Succession by Lender. If the interest of Landlord shall be transferred to and owned by Lender or a purchaser at foreclosure sale (collectively with Lender, a “New Owner”) by reason of foreclosure or other proceedings, or by any other manner, and the New Owner succeeds to the interest of the Landlord under the Lease, Tenant shall be bound to the New Owner under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the New Owner were

the Landlord under the Lease, and Tenant does hereby attorn to the New Owner as its landlord, said attornment to be effective and self operative, without the execution of any further instruments on the part of either Lender or Tenant, immediately upon the New Owner succeeding to the interest of Landlord under the Lease; provided, however, that Tenant shall be under no obligation to pay to the New Owner any rent or other sum payable pursuant to the Lease until Tenant receives satisfactory evidence from the New Owner that it has succeeded to the interest of Landlord under the Lease. The rights and obligations of Tenant and the New Owner upon attornment, to the extent of the then remaining balance of the term of the Lease and any extensions and renewals, shall be and are the same as now set forth in the Lease.

2.2. Limitation of Duties of New Owner. If the New Owner shall succeed to the interest of Landlord under the Lease, the New Owner shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after the New Owner's succession to the interest of Landlord under the Lease, have the same remedies against the New Owner for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord if the New Owner had not succeeded to the interest of Landlord; provided, however, that the New Owner shall not be (i) personally liable for any act or omission of Landlord; or (ii) bound by any rent which Tenant might have paid to Landlord for more than one rental period in advance; or (iii) bound by any amendment or modification of the Lease made without its consent.

2.3. Landlord's Trustee. If any court of competent jurisdiction determines, in connection with any bankruptcy, insolvency, liquidation, dissolution, receivership or other similar proceeding affecting Landlord, that any amounts paid by Tenant to Lender under Section 2.2 hereof should have been paid by Tenant to Landlord or Landlord's trustee, receiver, liquidator or other person exercising similar powers in connection with any such proceeding (any of the foregoing, a "Trustee") and orders Tenant to pay such amounts to Landlord or the Trustee, Lender shall promptly pay such amount, together with any interest or costs imposed by such court, on behalf of Tenant. Lender shall hold Tenant harmless from any claims of Landlord or the Trustee, damages or expenses in any such proceedings arising out of any amounts paid by Tenant to Lender under Section 2.2 hereof, which expenses shall include reasonable attorney's fees.

Section 3. Subordination of Lease.

3.1. Subordination. Subject to Section 3.2, Tenant agrees that the Lease is hereby, and shall, at all times that the Lender, its successors and assigns are bound by this Agreement, continue to be, subordinated and made secondary and inferior in each and every respect to the Mortgage and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, but any and all such renewals, modifications, extensions, substitutions, replacements and/or consolidations shall nevertheless be subject to and entitled to the benefits of the terms of this agreement.

3.2. Subordination Conditioned Upon Non-Disturbance. The subordination created and/or evidenced by this agreement (the "Subordination") is conditioned upon this agreement being the valid and binding obligation of the Lender, its successors and assigns, including but not limited to any receiver, conservator, trustee in bankruptcy, dissolution or liquidation, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or any other state or federal governmental agency, corporation or instrumentality exercising similar functions or powers. If for any reason this agreement shall cease to be binding on the Lender or

its successors or assigns for any reason whatsoever, then the Subordination, and this agreement in its entirety, shall be void from its inception as though the agreement had never been executed and delivered. This Section 3.2 is specifically intended to render the agreement void ab initio under circumstances including, but not limited to, rejection of the agreement in bankruptcy, liquidation, reorganization, or other similar proceedings; invalidity of the agreement under the doctrine enunciated in *D'Oench, Duhme & Co. v. Federal Deposit Insurance Corp.*, 315 U.S. 447 (1942) and later judicial decisions, or similar doctrines under the judicial decisions or statutes of any state; or repudiation, unenforceability or invalidity of the agreement under Sections 212 or 217 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. Sections 1821 or 1823(e), or any similar federal or state statute, or any other statutory power of avoidance, whether state or federal.

Section 4. Miscellaneous.

4.1. Waiver. No purported waiver by either party of any default by the other party of any term or provision contained herein shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving party. No such waiver shall in any event be deemed a waiver of any later default under the same or any other term or provision contained herein.

4.2. Entire Agreement. This agreement sets forth the entire understanding between the parties concerning the subject matter of this agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties relating to the subject matter of this agreement other than those set forth herein. No representation or warranty has been made by or on behalf of either party to this agreement (or any officer, director, employee or agent thereof) to induce the other party to enter into this agreement or to abide by or consummate any transactions contemplated by any terms of this agreement, except representations and warranties, if any, expressly set forth herein. No alteration, amendment, change or addition to this agreement shall be binding upon either party unless in writing and signed by the party to be charged.

4.3. Successors. Each and all of the provisions of this agreement shall be binding upon and inure to the benefit of Lender and Tenant, their successors and assigns.

4.4. Notices. Any consent, waiver, notice, demand, request or other instrument required or permitted to be given under this agreement shall be in writing and be sent by certified or registered United States mail, return receipt requested, or delivered by personal or courier delivery, postage prepaid, addressed:

If to Tenant:

If to Lender:

Any such consent, waiver, notice, demand, request or other instrument shall be deemed given upon receipt or upon the refusal of the addressee to receive the same as indicated on the return receipt. Either party may change its address for notices by notice in the manner set forth above.

4.5. Captions. The captions and section numbers appearing in this agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of the provisions of this agreement.

4.6. Partial Invalidity. Subject to and limited by Section 3.2, if any term or provision of this agreement or the application thereof to any person, firm or corporation, or circumstance, shall be invalid or unenforceable, the remainder of this agreement, or the application of such term or provision to persons, firms or corporations, or circumstances, other than those as to which it is held invalid, shall both be unaffected thereby, and each term or provision of this agreement shall be valid and be enforced to the fullest extent permitted by law. Notwithstanding the foregoing, the provisions of Section 1 and Section 3.2 are of the essence of this agreement, and any invalidity or unenforceability of Section 1 or Section 3.2 shall render this entire agreement invalid and unenforceable.

4.7. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of Ohio applicable to agreements to be performed in the State of Ohio.

4.8. Counterparts; Signatures. This agreement may be executed in counterparts, each of which when executed by the parties hereto shall be deemed an original and all of which together shall be deemed the same agreement. Any acceptance, signature, execution or validation of this agreement or any communication or notice required hereunder, shall be manually signed and delivered by hard copy. No purported offer, acceptance, or contract, amendment, or binding agreement in connection with this transaction shall be made by automated agent, electronic agent, electronic mail, electronic signature, telephonic voice mail, sound recording, or other electronic means of any kind, all as such terms are defined in the Uniform Electronic Transactions Act ("UETA", Ohio Revised Code Chapter 1306), the Electronic Signatures in Global and National Commerce Act ("ESIGN", 15 U.S. Code Sections 7001 et seq.), or any similar state or federal legislation. This Section is intended as an express disclaimer of intent, and an express refusal, under UETA and ESIGN to conduct this transaction by electronic means. This Section cannot be waived except by manually signed, written consent of both parties.

The parties have caused this agreement to be executed as of the day and year first above written.

<Signatures>

<Acknowledgements>

<Prepared by/record and return to>

Exhibit C—Sample Provisions

RENT AND ADDITIONAL RENT (OFFICE)

Annual Rent. Commencing on the Term Commencement Date and subject to the provisions of this Lease, Tenant shall pay the Annual Rent of _____ and No/100 Dollars (\$_____) payable in equal monthly installments in advance of _____ and No/100 Dollars (\$_____) on the first day of each calendar month during the Initial Term (the “Annual Rent”). The Annual Rent has been calculated at the approximate annual rate of _____ and No/100 Dollars (\$_____) per rentable square foot. Annual Rent or Additional Rent for any period of less than one month shall be apportioned based on the number of days in that month. Tenant will pay the Annual Rent and Additional Rent to Landlord at its office as designated in accordance with Article Twenty-Four or to such other person or at such other place as Landlord may designate in writing.

Extended Term Rent. The words Extended Term Rent shall mean the annual base rental paid during the First Extended Term and Second Extended Term, as finally determined in accordance with this Section. Not more than fifteen (15) months prior to the expiration of the Initial Term and the first Extended Term, Tenant may request, in writing, that Landlord offer to Tenant an Extended Term Rent rate for the first Extended Term or the second Extended Term, as the case may be: Following such a request by Tenant, Landlord shall offer, in writing, not less than twelve (12) months prior to the expiration of the Initial Term or first Extended Term, an Extended Term Rent rate for the first Extended Term or second Extended Term, as the case may be. The Extended Term Rent shall be the sum of (i) Tenant’s Share of Operating Expenses for the Operating Expense Base Year, expressed on a per square foot basis, plus (ii) eighty-five percent (85%) of the market “face” rate, per rentable square foot then leased by Tenant. The market “face” rate shall be the net rental rate, stated on an annualized per square foot basis, paid by tenants leasing a similar amount of space in similar properties, for a similar term, having similar landlord-provided services, in the open and competitive market in the area known as the _____ (bounded by _____) in downtown _____, _____ (excluding any and all charges, fees, payments, or reimbursements of taxes, insurance, maintenance or other impositions, or other of the Landlord’s ownership and operating expenses, whether or not specifically denominated in this Lease as Operating Expenses, but without consideration of tenant finish allowances, cash or other tenant incentives). Tenant may accept such offer in its written notice to extend the term of this Lease as provided in Section _____, or exercise its option as provided in Section _____, but reject Landlord’s offer of an Extended Term Rent rate for the applicable Extended Term, in which event Tenant shall submit to Landlord an alternative Extended Term Rent rate for such Extended Term. In the event Landlord and Tenant still do not agree, the matter shall be submitted for arbitration as provided in Article Thirty-Six. The issue submitted shall be to determine which of Landlord’s or Tenant’s proposed Extended Term Rent most closely approximates eighty-five percent (85%) of the market “face” rate as defined above on the date the applicable Extended Term is to commence, and, subject to the following sentence, such proposed Extended Term Rent shall be the Extended Term Rent for such Extended Term. Notwithstanding the foregoing, in no event shall the Extended Term Rent exceed Landlord’s initial offer of Extended Term Rent to Tenant or be less than Tenant’s alternative Extended Term Rent rate submitted to Landlord. Extended Term Rent shall be paid in equal monthly installments in advance on the first day of each month during the applicable Extended Term. If the Extended Term Rent for the applicable Extended Term has not been determined as of the first day of the Extended Term, Tenant shall continue to pay Landlord equal monthly installments of Annual Rent

for such Initial Term or Extended Term Rent for the first Extended Term, as the case may be on the first day of the first month after the Extended Term Rent for the applicable Extended Term has been determined, Tenant shall pay the excess of such Extended Term Rent over the Annual Rent or the Extended Term Rent for the first Extended Term for the period during the first Extended Term or second Extended Term, as the case may be, during which Tenant has been paying such Annual Rent or Extended Term Rent. If such Extended Term Rent is less than the Annual Rent or Extended Term Rent for the preceding Initial Term or first Extended Term, then Landlord shall refund the difference to Tenant.

Additional Rent. In addition to Annual Rent or Extended Term Rent, Tenant shall pay Additional Rent which shall mean all sums of money payable by Tenant under this Lease other than Annual Rent or Extended Term Rent.

Operating Expenses. Tenant shall pay as Additional Rent Tenant's Share of the Operating Expense overage. The words "Operating Expense Overage" mean the amount by which the annual Operating Expenses for each Operating Expense Escalation Year exceed Operating Expenses for the Operating Expense Base Year. The words "Tenant's Share" shall mean _____ percent (_____%), determined by dividing _____ rentable square feet in the Leased Premises by _____ rentable square feet in the Building. Tenant's Share shall be adjusted to reflect any change in the rentable square feet in the Leased Premises or in the Building.

(a) The words "Operating Expenses" shall mean the operating costs specified below in Paragraph A which are actually incurred by Landlord for the Operating Expense Base Year and in an Operating Expense Escalation Year, to the extent they are properly allocable (in accordance with generally accepted accounting principles consistently applied) to the operation, repair and maintenance of the Project. If during the Operating Expense Base Year or any successive operating Expense Escalation Year the Building is not one hundred percent (100%) occupied, or if less than all of a full year's Operating Expenses have been incurred, the Operating Expenses actually incurred in the Operating Expense Base Year and such Operating Expense Escalation Year shall be increased to the sum which would have been incurred at one hundred percent (100%) occupancy for a full year. Any cost allocable to the items specified below in Paragraph B and any costs incurred after the expiration of the term of this Lease or earlier termination of Tenant's obligation to pay rent shall be excluded from Operating Expenses.

A. Items Included In Operating Expenses:

(1) subject to Section _____, all real estate taxes, assessments, governmental levies, county taxes or any other governmental charge, which shall be levied or assessed or which become liens upon the Project (hereinafter called "Real Estate Taxes"). Real Estate Taxes shall not include (1) income tax, tax on rents or rentals, excess profits or revenue tax, excise tax or inheritance tax, gift tax, franchise tax, corporation tax, capital levy transfer, estate, succession or other similar tax or charge that may be payable by or chargeable to Landlord under any present or future Laws; (2) interest or penalties imposed upon Landlord for late payment of Real Estate Taxes; (3) special assessments and Real Estate Taxes attributable to tenant improvements provided for any tenant of the Building with an assessed valuation materially greater than the assessed valuation of tenant improvements furnished generally to other tenants, and (4) Real Estate Taxes and assessments for a facility and land used in connection with the Project, other than the Building, for which a fee is charged, such as the Parking Garage or the parking area attached to the Building;

(2) salaries, wages, and all other expenses incurred for the employment of the Building operating and security personnel, excluding Landlord's officers, partners and headquarters staff (such costs being covered under subparagraph (10));

(3) the cost of materials and supplies;

(4) the cost of replacements for tools and maintenance equipment (such equipment shall not include air conditioning equipment, boilers, elevators or any items of a capital nature);

(5) amounts paid by Landlord to independent contractors for services (including full or part-time labor) and materials;

(6) water charges and sewer rents;

(7) the cost of maintaining, repairing and repainting or otherwise redecorating any part of Common Building Facilities;

(8) the cost of telephone service, postage, office supplies, maintenance and repair of office equipment and similar charges related to operation of the Building;

(9) premiums for insurance purchased by Landlord pursuant to Subsection 10.02(a), subject to Paragraph B, subparagraph (11) below, and with respect to the following insurance on the employees specified in subparagraph (2) above and the Building, in amounts that a reasonably prudent operator of a first class office building would carry or which the holder of any mortgage affecting the Project might require to be carried under the terms of its mortgage: (i) public liability; (ii) elevator; (iii) boiler damage, water damage, legal liability and pilferage on Building equipment and materials; (iv) workmen's compensation; (v) health, accident, disability and group life; and (vi) other insurance which a reasonably prudent operator of a first class office building would carry or which the holder of any mortgage affecting the Project might require to be carried under the terms of its mortgage;

(10) the management fee set forth in the management contract by and between Landlord and _____ ("Property Manager") dated _____, a true and complete copy of which has been furnished to Tenant prior to the date hereof, such fee having been included as part of the Operating Expense Base Year, and, if said management contract is terminated, management fees, not exceeding the market rate for such fees in the open and competitive downtown Indianapolis market, under any successor management agreements;

(11) all costs and expenses (other than those of a capital nature) of maintaining, repairing and replacing paving, curbs, walkways and landscaping;

(12) the cost of electricity used in the Common Building Facilities and fuel used in the Project;

(13) the cost of normal maintenance of mechanical and electrical equipment, including heating, ventilating and air conditioning and elevator equipment, but excluding capital expenditures;

(14) legal fees of outside or special counsel retained by Landlord in connection with proceedings for the reduction of real estate taxes, labor relations, or other matters to the extent that the same shall be of general benefit to all tenants in the Building and not caused by the acts of any particular tenant or tenants;

(15) license, permit and inspection fees pertaining to the Project as a whole and not any particular tenant or tenants;

(16) auditor's fees for public accounting in connection with the calculation of, and not related to any tenant's contest with respect to, Operating Expenses;

(17) amortization of the cost of those repairs, alterations, changes, replacements and the like which under generally accepted accounting principles are properly classified as capital expenditures which will improve Building operating efficiencies, but only to the extent of any actual reduction of Operating Expenses resulting therefrom, or which may be required by governmental authorities as to Laws hereafter in effect; and

(18) the annual fair market rental value of a building manager's office in the Building, not exceeding one thousand (1,000) square feet.

Operating Expenses shall be reduced by the amounts of any reimbursement, refund or credit received or, if not diligently pursued by Landlord, receivable by Landlord with respect to any item of Operating Expenses, and Landlord shall diligently pursue collection thereof. If any such reimbursement, refund or credit is received or receivable by Landlord in a later operating Expense Escalation Year, it shall be applied against the Operating Expenses for such later Operating Expense Escalation Year; provided, however, that if the term of this Lease has expired, Tenant's Share of such item shall be promptly refunded by Landlord to Tenant.

B. Items Excluded from Operating Expenses:

(1) the cost of any work performed (such as preparing a tenant's space for occupancy, including painting and decorating) or services provided (such as separately metered electricity) for any tenant (including Tenant) at such tenant's cost, or provided by Landlord without charge as an inducement to lease (such as free rent or improvement allowances);

(2) the cost of installing, operating and maintaining any specialty service, such as an observatory, broadcasting facility, luncheon club, retail store, sundry shop, newsstand, concession, or athletic or recreational club;

(3) the cost of correcting defects in construction;

(4) salaries of Landlord's officers, partners and headquarters staff;

(5) the cost of any work performed or service provided for any tenant of the Building (other than Tenant) to a materially greater extent or in a materially more favorable manner than that furnished generally to the other tenants and occupants (such as electricity and cleaning services provided to retail tenants);

(6) the cost of any work performed or service provided (such as electricity) for any facility other than the Building (such as the Parking Garage) for which fees are charged;

(7) the cost of any items for which Landlord is reimbursed by insurance proceeds, condemnation awards, a tenant of the Project, or otherwise;

(8) the cost of any additions to the Project, or operating Expenses generated by such additions, after the date of this Lease;

(9) the cost of any repairs, alterations, additions, changes, replacements and the like which under generally accepted accounting principles are properly classified as capital expenditures, except as provided in Paragraph A, subparagraph 17 above;

(10) the cost of any repair made in accordance with Articles Ten and Twelve of this Lease entitled "Fire and Other Casualty - Insurance" and "Condemnation";

(11) insurance premiums to the extent any tenant causes Landlord's existing insurance premiums to increase or requires Landlord to purchase additional insurance;

(12) interest and principal payments on any debt, depreciation, and rental under any ground lease or other underlying lease;

(13) any real estate brokerage commissions or other costs incurred in procuring tenants, or any fee in lieu of commission;

(14) any advertising expenses;

(15) any costs representing an amount paid to a Related or Affiliated Person of Landlord which is in excess of the amount which would have been paid in the absence of such relationship;

(16) payments for rented equipment, the cost of which equipment would constitute a capital expenditure if the equipment were purchased;

(17) any expenses for repairs or maintenance which are covered by enforceable warranties, guarantees or service contracts (excluding any mandatory deductibles);

(18) legal expenses arising out of the construction, operation, use, occupation or maintenance of the Project, or the enforcement of the provisions of any agreements affecting the Project, including this Lease;

(19) new items not included in the items included in operating Expenses pursuant to Paragraph A above; and

(20) any expenses in connection with Hazardous Wastes.

(b) The words "Operating Expense Base Year" shall mean calendar year ____.

(c) The words "Operating Expense Escalation Year" shall mean each calendar year during the Term, commencing with calendar year _____. Any increase of operating Expenses for any calendar year during the term of this Lease shall be apportioned so that Tenant shall pay Tenant's Share of only that portion of the increase for such year as falls within the term of this Lease.

(d) Prior to any Operating Expense Escalation Year, Landlord shall deliver to Tenant a written estimate of the operating Expense Overage which may be due during an operating Expense Escalation Year, and Tenant shall make estimated payments of Additional Rent due hereunder in an amount equal to one-twelfth (1/12th) of Tenant's Share of the estimated operating Expense Overage for that particular Operating Expense Escalation Year, together with the monthly installments of Annual Rent or Extended Term Rent due hereunder. Such monthly estimated payments shall commence on the first day of the first full month following the first anniversary of the Term Commencement Date and continue on the first day of each month throughout the term of this Lease. For example, if the Term Commencement Date is _____, _____, monthly estimated payments shall commence on _____.

(e) Within one hundred twenty (120) days after each Operating Expense Escalation Year, Landlord shall submit a statement, audited by a firm of independent certified public accountants selected by Landlord, setting forth in detail the amount of (1) each item included in the Operating Expenses and/or the Real Estate Taxes each Operating Expense Base Year and each Operating Expense Escalation Year and (2) any other Additional Rent ("Landlord's Statement"), together with a receipted Real Estate Tax bill or photocopy thereof. Subject to subparagraph (f) below, within thirty (30) days after Tenant receives Landlord's Statement, Tenant shall pay to Landlord the amount by which the actual Tenant's Share of the operating Expense Overage for the Operating Expense Escalation Year exceeds the aggregate of the estimated payments made by Tenant for such Operating Expense Escalation Year, together with any other Additional Rent which may be due, or Landlord shall credit (or, with respect to the last Operating Expense Escalation Year, refund to) Tenant the amount by which the aggregate of the estimated payments made by Tenant exceeds the actual Tenant's Share of the Operating Expense Overage for that operating Expense Escalation Year. During the first and last operating Expense Escalation Year, adjustments with respect to actual and estimated operating Expenses shall be made pro rata based upon the portion thereof during which Tenant is required to make estimated payments.

(f) Landlord shall, at Tenant's request, make available to Tenant for inspection and examination the books and records that relate to Landlord's Statement. However, if after request by Tenant the books and records are not made promptly available at Landlord's offices during Landlord's normal business hours, the Additional Rent due in that year shall not be payable earlier than thirty (30) days after the Tenant's request is honored. If Tenant disputes any portion of Landlord's Statement and the parties cannot resolve their differences within thirty (30) days thereafter, the matter shall be resolved by arbitration as provided in Article Thirty-Six. Pending resolution of any dispute, Tenant may withhold payment of the amount in dispute.

(g) If Tenant has not received Landlord's Statement by the end of thirty-six (36) months following the year (whether calendar or fiscal) in which the Operating Expenses are payable by Landlord, Landlord agrees that Landlord has waived its claim against Tenant for, Tenant's Share of the Operating Expense overage for such year.

(h) This Article shall survive the expiration or earlier termination of the term of this Lease.

EXCLUSIONS FROM OPERATING EXPENSES (TENANT'S VERSION)

- Costs of capital repairs, replacements, improvements and/or equipment;
- Costs of casualty restoration to the extent the landlord is reimbursed by insurance proceeds;
- Costs of tenant improvement or renovations;
- Debt service costs (depreciation, amortization, interest and principal payments, points, etc.), and ground lease rentals;
- Marketing costs (leasing commissions, attorneys fees in connection with lease negotiation and preparation, space planning costs, advertising and promotional expenditures);
- Costs of legal compliance (ADA, building, fire and safety codes, environmental remediation);
- Overhead or profit increment paid to the landlord or its subsidiaries or affiliates for goods and services to the extent the cost of such goods and services exceeds that which would be charged by unaffiliated providers on a competitive basis;
- General overhead and administrative expenses of the landlord;
- Management fees in excess of those charged by landlords of comparable buildings in the relevant market;
- Compensation paid to employees working in the parking garage of the building (or dedicated off-site parking facility) and/or fees paid to the parking garage or facility operator (except that to the extent the landlord provides such parking to the tenant free of charge or at a reduced rate, the difference between the tenant's pro rata share of such expenses and any amount paid by the tenant for such parking may be included);
- Any increase in real estate taxes resulting from sale or other transfer of the building or from major alterations or renovations to the building;
- Any other cost which would ordinarily not be treated as an operating expense under GAAP principles.

RENT AND ADDITIONAL RENT (RETAIL) (SHORT-FORM)

Fixed Minimum Annual Rent. Fixed minimum annual rent (the "Minimum Rent") shall be equal to the following sums, each payable in twelve (12) equal monthly installments, in advance, on the first day of each month during the term hereof, with pro rata adjustments for partial lease years and/or fractional months:

- (i) for and during the first lease year of the initial term, the sum of _____ (\$_____) Dollars payable in equal monthly installments of _____ (\$_____) Dollars per month; and

(ii) for and during the _____ through the _____ lease years of the initial term, and for and during each, lease year of each Extended Term, if any, Minimum Rent shall be determined in the following manner:

(A) multiplying the annual Minimum Rent for the immediately preceding lease year by a fraction the numerator of which is the Index as published for the month of _____, immediately preceding the new lease year or the nearest month thereto, and the denominator of which is the Index as published for the month of _____ which is twelve (12) months prior to the month referred to for the numerator above, or the nearest month thereto. If the Index is discontinued during the term, such other comparable index shall be substituted for purposes of calculation of the Minimum Rent adjustments. Notwithstanding the foregoing rent adjustment formula, in no event shall the adjusted Minimum Rent for any lease year be an amount which (xx) exceeds by more than _____ percent (____%) the Minimum Rent for the immediately preceding lease year, and (yy) is less than the Minimum Rent for the immediately preceding lease year. The adjusted annual Minimum Rent for each lease year shall be payable in equal monthly installments on the first day of each and every calendar month during such lease year in the manner described in this Section 3.

(B) For purposes of this Lease, "Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items (1982-1984=100), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics. If the base period of the Index is changed from 1982-1984, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

(b) Lease Year. For purposes of this Lease, a "lease year" shall mean each period of twelve (12) consecutive calendar months commencing January 1 and ending December 31 during the term hereof.

Additional Rent. All sums of money, amounts and charges payable by Tenant hereunder in addition to Minimum Rent shall for all purposes constitute additional rent, whether or not the same are so designated. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectible as rent with the next installment of Minimum Rent thereafter failing due hereunder together with a late charge of fifteen percent (15%) per annum from the due date thereof to the date of payment, but not in excess of the highest rate allowed by law.

(a) Amounts Included. Additional rent shall include expenses reasonably incurred by Landlord in the operation of the Shopping Center, including, without limitation, the following:

(i) Taxes.

(A) Real Estate Taxes and Assessments. Tenant shall pay to Landlord as additional rent Tenant's Proportionate Share (as hereinafter defined) of all real estate taxes and assessments, both general and special, foreseen and unforeseen, ordinary and extraordinary, levied and assessed during the term against the land, buildings and all other improvements within the Shopping Center (including any land or

improvements which may be added thereto) and any costs and fees incurred by Landlord in contesting or defending the same and/or negotiating with public authorities (collectively the "Taxes").

During the term of this Lease, Tenant shall pay to Landlord, on the first day of each calendar month, in advance, an amount equal to 1/12th of Tenant's Proportionate Share of Taxes for the current tax year, as from time to time reasonably estimated by Landlord based upon the actual amount of such Taxes paid during the previous tax year and any anticipated adjustments. Within ninety (90) days following the end of each tax year, or at such time as paid tax bills are available from the government authority, Landlord shall furnish to Tenant a statement of the actual amount of Tenant's Proportionate Share of Taxes for such period, together with a true copy of the receipted bill for Taxes covering such period. Within thirty (30) days thereafter, Tenant shall pay to Landlord or Landlord shall credit to the next due payment(s) of estimated Taxes (unless the term of this Lease has expired or terminated, whereupon Landlord will refund to Tenant), as the case may be, the difference between the estimated amounts paid by Tenant and the actual amount of Tenant's Proportionate Share of Taxes for such period as shown by such statement. Tenant's Proportionate Share of estimated Taxes for succeeding tax years shall be an amount equal to the actual amount of Tenant's Proportionate Share of the Taxes for the preceding tax year, or such other amount as reasonably estimated by Landlord from time to time: Landlord may re-estimate Tenant's Proportionate Share of Taxes during a tax year in the event an adjustment of the actual amount of Taxes is reasonably anticipated, provided that evidence of the impending adjustment is given to Tenant, in which event Tenant shall pay within thirty (30) days after demand any deficiency which may have accrued in estimated payments during such tax year, and thereafter the estimated monthly payments will be adjusted. With respect to any partial tax year during the term hereof Tenant's obligations to pay Taxes shall be prorated on the basis of the actual number of days, in the portion of the tax year included with term.

(B) Municipal, County, State or Federal Taxes. Tenant shall pay, before delinquency, (or may contest at Tenant's sole cost and expense) all municipal, county and state or federal taxes assessed against any leasehold interest of Tenant or any fixtures, furnishings, equipment, stock-in trade or other personal property of any kind owned, installed or used in or on the Premises. Any tax contest shall be prosecuted by Tenant with all due diligence, and shall not delay or excuse the timely payment of the contested tax except to the extent permitted by applicable law.

(C) Rental Taxes. Should any governmental taxing authority levy, assess or impose any tax, excise or assessment (other than an income or franchise tax) upon or against the rentals payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax, on land and buildings or otherwise, or upon Landlord or Tenant as a result of Landlord's ownership of the Premises or Shopping Center or that are otherwise measured by or based upon the Shopping Center or any portion thereof, Tenant shall be responsible for and shall pay any such tax, excise or assessment, or shall reimburse the Landlord for the amount thereof, as the case may be.

(ii) Insurance. Tenant shall pay to Landlord as additional rent during each lease year or partial lease year Tenant's Proportionate Share of the total fire and extended coverage insurance premiums charged to Landlord as and for insuring the Shopping Center buildings, improvements and Common Areas for any such year and Tenant's Proportionate Share of public liability and property damage insurance premiums for the Common Areas for any such year. For any partial lease year of the term hereof, such amount shall be prorated based upon a 360-day year. Payment hereunder shall be made within thirty (30) days after receipt of a written statement from Landlord setting forth the amount of such share of insurance premiums together with reasonable proof of payment thereof by Landlord.

(iii) Common Area Charges. Tenant shall pay to Landlord, as additional rent, Tenant's Proportionate Share of Landlord's total annual costs and expenses of operating, maintaining, repairing, upgrading and supervising the Common Areas (as hereinafter defined), which includes, without limitation, the costs of managing, cleaning, lighting and repairing the Common Areas; removing snow, trash, rubbish, garbage and other refuse; line painting; sanitary or pest control; landscaping and gardening; providing security and traffic control forces and equipment (should Landlord elect to provide same); total compensation and benefits (including premiums for worker's compensation and other insurance) paid to or on behalf of employees (below the level of Shopping Center manager) involved with the maintenance, cleaning, repairing, operating and managing of the Common Areas; personal property taxes; supplies; fire protection and fire hydrant charges; water and sewer charges; utility charges; licenses and permit fees; repairing and replacing light poles, bulbs, signs, utility lines and facilities, and related appurtenances serving the Common Areas; governmental charges, surcharges, fees or taxes on the parking areas or the cars parking thereon; rent paid for leasing any equipment and machinery used in operating and maintaining the Common Areas; inspection of facilities; and administrative cost equal to ten percent (10%) of the total cost of all the foregoing items (the "Common Area Charges").

During the term of this Lease, Tenant shall pay to Landlord on the first day of each calendar month, in advance, an amount equal to one-twelfth (1/12) of Tenant's Proportionate Share of the Common Area Charges as from time to time reasonably estimated by Landlord. Within ninety (90) days following the end of each calendar year, Landlord shall furnish to Tenant a statement of the actual amount of Tenant's Proportionate Share of such Common Area Charges for such period. Within thirty (30) days thereafter, Tenant shall pay to Landlord or Landlord shall credit to the next due payment(s) of estimated Common Area Charges (unless the term of this Lease has expired or terminated, whereupon Landlord will refund to Tenant), as the case may be, the difference between the estimated amounts paid by Tenant and the actual amount of Tenant's Proportionate Share of the Common Area Charges for such period as shown by such statement. For a period of thirty (30) days after receipt from Landlord of the annual statement of Tenant's Proportionate Share of actual Common Area Charges, Tenant shall have the right to review Landlord's records evidencing the actual amount of Common Area Charges for the period in question. Landlord may re-estimate Tenant's Proportionate Share of Common Area Charges during a calendar year in the event an adjustment of the actual amount of Common Area Charges is reasonably anticipated, provided that evidence of the impending adjustment is given to Tenant, in which event Tenant shall pay within thirty (30) days after demand any deficiency which may have accrued in estimated payments during such calendar year, and thereafter the estimated monthly payments will be adjusted. With respect to any partial calendar year during the Term hereof, Tenant's obligations to pay Common Area Charges shall be prorated on the basis of the actual number of days in the portion of the calendar year included within the Term.

(b) Tenant's Proportionate Share; Floor Area. The term "Tenant's Proportionate Share" as used throughout this Lease shall mean a fraction, the numerator of which shall be the total square feet of Floor Area (as hereinafter defined) within the Premises, and the denominator of which shall be the total square feet of Floor Area then existing within the Shopping Center. The term "Floor Area" as used throughout this Lease shall include all areas for the exclusive use and occupancy by an occupant, measured from the exterior surface of exterior walls (and from the exteriors thereof in the case of openings) and from center of walls dividing the Premises from other premises. Floor Area shall not include the second level of any multi-level stock areas, the basement, truck tunnels, docks, areas for truck tunnels and docks, areas for truck loading and unloading (to the extent such facilities lie outside exterior building lines), nor any utility and/or mechanical equipment area unless such area serves only the Premises. No deduction or exclusion shall be made from Floor Area by reason of columns, stairs, elevators, escalators, or other interior construction or equipment within the Premises. For purposes of this Lease, the parties acknowledge and agree that the Floor Area within the Premises is deemed to be square feet, the Floor Area of the Shopping Center is deemed to be square feet, and Tenant's Proportionate Share shall be _____ percent (___%).

PERCENTAGE RENT-RETAIL (LANDLORD)

Overage Rent. (a) In addition to Fixed Minimum Rent, Tenant agrees to pay Landlord Overage Rent for each lease year and partial lease year during the term of this Lease the amount by which _____ percent (___%) of Tenant's "gross sales", as hereinafter defined, exceeds the Fixed Minimum rent payable for such lease year or partial lease year, as said Fixed Minimum Rent may be reduced or abated during the term of this Lease.

(b) The first lease year shall begin on the first day for which Fixed Minimum Rent is payable (except that for the purpose of determining Overage Rent the first lease year shall begin on the day Tenant first opens for business) and shall end on the last day of the twelfth (12th) full month following the Commencement Date of this Lease: Succeeding lease years shall each consist of the twelve (12) month period beginning with the first day following the prior lease year.

Gross Sales Defined. The term "gross sales" means the aggregate dollar amount of all income and receipts emanating from and all business done in, on or resulting from the Premises, including, without limitation, all sales of merchandise, food or beverages; rental or license fees; income from manufacture or production of merchandise; income from classes; and all charges for services performed in, upon, emanating from or resulting from the Premises, whether evidenced by cash, check, charge account, trade-in, exchange or otherwise and regardless of collection; whether such sales are made to persons present at the Premises, by mail, telephone orders, or otherwise; whether any such orders come to or are filled at the Premises or elsewhere; and whether made by Tenant or any sublessees, concessionaires, licensees, assignees, vendors, occupants or otherwise. Gross sales shall exclude interstore transfers of merchandise, returns of merchandise to the extent of cash refunds, and allowances made on sales of defective or unsatisfactory merchandise. Gross sales shall not include revenues from pay telephones, cigarette machines, newspaper machines and the amount of any sales tax imposed by any governmental authority directly on the sales and collected from the customers, provided that the amount thereof is separately recorded, is added to the selling price and is paid by Tenant to the governmental authority.

Reporting of Gross Sales and Payment. (a) Tenant, on or before the fifteenth (15th) day following the end of each month shall furnish to Landlord a written statement certified by Tenant to be correct of gross sales from the commencement of the current lease year to the end of the

month for which the report is due. Concurrently with the delivery to Landlord of such statement for the month in which gross sales equal the "breakpoint" (the Fixed Minimum Rent divided by ____%) and each month thereafter through the end of the lease year, Tenant shall pay to Landlord Overage Rent, if any, due to Landlord from the beginning of the lease year to the last day of the month covered by the report. Any payment owed for said partial lease year shall be reduced by any Overage Rent previously paid during said lease year.

(b) Tenant on or before the thirtieth (30th) day following the end of each lease year during the term of this Lease shall furnish to Landlord a written statement showing in reasonably accurate detail satisfactory in form, scope and style to Landlord, the aggregate gross sales for the preceding lease year and an itemized list of all exclusions or deductions from gross sales duly certified by an officer of Tenant to be correct and at such time Tenant shall pay to Landlord any Overage Rent due Landlord. If any excess Overage Rent has been paid by Tenant to the Landlord during or for the preceding lease year, Tenant shall receive a credit equivalent to such excess which may be deducted by Tenant from the next accruing payment of Overage Rent.

(c) Landlord agrees to keep the amount of Tenant's gross sales and any other matters Landlord may obtain from Tenant in the course of auditing or examining Tenant's records confidential, but Landlord may divulge said information to existing and potential mortgagees, potential purchasers, as required by law and for other legitimate business purposes.

Books and Records. (a) Tenant agrees to keep on the Premises or at Tenant's principal offices, accurate and adequate books and records of all business conducted, all gross sales, and all exclusions and deductions from gross sales, which shall be open for examination at all reasonable times to Landlord or Landlord's representative. The books and records shall include, without limitation, all cash register sales summary reports and other point-of-sale records used by Tenant; settlement reports with concessionaires, licensees, sublessees and other occupants; detailed original records of any exclusions or deductions from gross sales; all state sales tax returns; records of inventories and receipts; and all other books, records and materials which would normally be examined by an independent accountant in auditing Tenant's gross sales. All records shall be retained by Tenant for examination by Landlord for a period of at least three (3) years following the end of the lease year to which said records apply.

(b) If an examination of Tenant's records discloses a deficiency of reporting gross sales of three percent (3%) or more, Tenant agrees to pay to Landlord the reasonable cost and expense of any such examination. In addition, if an examination of Tenant's records discloses a deficiency of reporting gross sales of three percent (3%) or more and such deficiency was caused by Tenant's fraudulent and intentional misstatement of said gross sales, Landlord shall have the right to terminate this Lease. Any Overage Rent found due and owing as a result of an examination shall be paid by Tenant to Landlord immediately without demand with interest at the rate hereinafter set forth from the date said additional Overage Rent was originally due until the date actually paid and together with the late payment charge hereinafter set forth.

Additional Charges. (a) In addition to Fixed Minimum Rent Tenant agrees to pay to Landlord, at the times hereinafter set forth, without deduction, set-off or abatement, the following Additional Charges, the nonpayment of which shall be subject to all provisions of this Lease and of law as to default in the payment of money:

(i) Real Estate Taxes. Tenant shall pay to Landlord the real estate taxes and assessments, both general and special, payable by Landlord with respect to the Premises, land and buildings, ordinary and extraordinary, foreseen and unforeseen, of every kind and nature whatsoever, assessed, levied, confirmed, imposed upon, growing out of or becoming due or payable with respect to the Premises.

If the Premises shall not be separately assessed for tax purposes, Landlord shall pay such taxes and assessments before delinquency and Tenant shall pay to Landlord Tenant's "share" of the "real estate taxes and assessments". Tenant's "share" shall be the product of taxes and assessments included in Landlord's tax bill times a fraction, the numerator of which is the number of first floor square feet in the Building and the denominator of which shall be the total number of first floor and second floor (other than non-selling mezzanine space) square feet contained in all buildings taxed under said tax bill. If the Building is the only building taxed in said bill but there is more or less land taxed in said bill than contained in the Premises, Tenant shall pay all of the tax attributable to said Building and shall pay the tax for the land on a prorated basis.

"Real estate taxes and assessments" shall include all costs and fees incurred by Landlord in contesting or defending the same and/or negotiating with public authorities except that Landlord shall not initiate any contest or defense without first obtaining Tenant's consent, which approval shall not be

PERCENTAGE RENT - PARTIAL YEAR (TENANT)

In the event of a Partial Lease Year prior to the first full Lease Year, Tenant shall pay to Landlord as Percentage Rent for such Partial Lease Year an amount equal to the Gross Sales for the first twelve (12) consecutive calendar months (plus the Gross Sales for a partial month, if any, at the commencement of the term) subsequent to the Rent Commencement Date of the term of this lease in excess of the Minimum Basis of Sales multiplied by _____ percent (___%) and such product multiplied by a fraction, the numerator of which is the number of calendar days in the Partial Lease Year and the denominator of which is three hundred sixty-five (365) plus the number of days in the partial month, if any, at the commencement of the term. Percentage Rent for the Partial Lease Year shall be paid to Landlord on or before the last day of the fourteenth calendar month following the Rent Commencement Date of the term of this lease. The provisions of this paragraph shall not affect the provisions of this lease applicable to the computation of Percentage Rent to be paid by Tenant to Landlord for the first or any subsequent Lease Year.

EXCLUSIONS FROM GROSS SALES (TENANT)

In addition to the aforesaid deductions from Gross Sales, Tenant shall be permitted the following:

1. Sales to employees of Tenant at a discount of at least thirty percent (30%), provided such deduction does not exceed _____ percent (___%) of Gross Sales in any one Lease Year (or Partial Lease Year).

2. Shipping or delivery charges at no gross profit to Tenant, provided such deduction does not exceed _____ percent (___%) of Gross Sales in any one Lease Year (or Partial Lease Year).

3. Repair services including handling charges rendered to Tenant's customers which result in no profit to Tenant, or any affiliate, subsidiary, parent or Guarantor of Tenant, provided such deduction does not exceed _____ (___%) of Gross Sales in any one Lease Year (or Partial Lease Year).

4. Catalogue sales written up on the Premises provided that payment is not accepted and merchandise is not processed at the Premises.

5. Bad debts, not to exceed _____ percent (___%) of total Gross Sales in any one Lease Year (or Partial Lease Year), provided said bad debts were actually deducted by Tenant for Federal Income Tax purposes, and upon the further condition that any such amounts as may be later collected will be included in Gross Sales in the year of collection.

6. The value of items of merchandise "traded-in" by customers at the time of trade-in, not to exceed _____ percent (___%) of total Gross Sales in any one Lease Year (or Partial Lease Year), provided that if such items shall be later sold, the greater of sales price or assigned trade-in value shall be included in Gross Sales.

EXCLUSIONS FROM CAM COSTS (TENANT)

The following items shall be excluded from Tenant's Common Area Charge:

1. costs of original or subsequent land acquisition;
2. original costs of structural construction of the Shopping Center;
3. subsequent new structural construction of an expansion of the Shopping Center;
4. paving of new or additional parking areas not currently existing;
5. depreciation of the above items;
6. any items for which Landlord is reimbursed by insurance or compensated for due to loss or damage to the Common Areas or Service Areas, or a taking by Eminent Domain, to the extent of such compensation or reimbursement, or for which Landlord would have been reimbursed had such required insurance been carried as set forth in Article 9, Section 3;
7. legal brokerage fees, advertising expenses, or other related expenses incurred in connection with the leasing of the Shopping Center;
8. legal fees, accountant fees and other expenses incurred in connection with disputes with tenants or other occupants or expenses associated with the enforcement of leases or defense of Landlord's title to or interest in the Shopping Center or any portion thereof;

9. costs (including permits, licenses and inspection fees) incurred in renovating or otherwise repairing, maintaining, decorating or altering Mall Store space for tenants or vacant Mall Store space in the Shopping Center;

10. the cost of any equipment, systems or improvements described in this section which are capitalized by Landlord shall be amortized in accordance with shopping center accounting procedures over the useful life and only the applicable amount shall be included as a cost in any Common Area accounting year;

11. expenses in connection with services or other benefits available to other tenants or occupants in the Shopping Center, but not to Tenant;

12. costs incurred due to or in connection with a violation by Landlord of the terms and conditions of any lease of space in the Shopping Center, and costs incurred due to violations by Landlord of any governmental law, rule, regulation or ordinance;

13. interest on debt or amortization payments on any mortgages or deeds of trust;

14. overhead and profit increment paid to a subsidiary, affiliate or other entity related to Landlord for services to the extent the same exceed competitive costs of such services were they not so rendered by a subsidiary, affiliate or other Landlord related entity;

15. advertising and promotional expenditures;

16. costs payable by another tenant or work done directly for other tenants pursuant to Exhibit C of the lease;

17. depreciation and amortization of debt or improvements to the Shopping Center;

18. Landlord's general corporate overhead and administrative costs, including, but not limited to, executive wages, business related expenses, and including all of Landlord's overhead except as specifically set forth herein;

19. compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord for the sole benefit of Landlord;

20. costs for removal, encapsulation or monitoring of any Hazardous Materials;

21. wages, salaries or other compensation paid to any executive or employee above the grade of Shopping Center manager; and

22. costs of correcting bonafide defects in the original construction of the Shopping Center which are under warranty, and costs that are actually reimbursed to Landlord through warranties.

Gross revenues received by Landlord from the use of any parking facility for the Shopping Center shall be deducted from Landlord's total costs and expenses of operating and maintaining the Common Areas and Service Areas of the Shopping Center prior to determining Tenant's Common Area Charge.

Nothing in this section shall be construed to limit any and all other items which are properly included in the Common Area Charge under this Article 5, Section 4.

To the extent Landlord depreciates any capital item as reported on its Federal Income Tax return, such items shall not be charged at their total acquisition cost as an expense to Tenant, but rather shall be charged as an expense in the form of annual and reasonable depreciation, as indicated in Article 5, Section 4.

TENANT'S AUDIT RIGHT

Tenant shall have the right, provided Tenant is not in default, at its expense, upon thirty (30) days prior written notice to Landlord, but not more than once per Lease Year, to audit Landlord's records with respect to Tenant's Common Area Charge, provided: (a) any audit to be conducted by Tenant shall be accomplished within twelve (12) months following Tenant's receipt of Landlord's statement of the Common Area Charge, (b) such audit will be conducted in Landlord's office, or such other location designated by Landlord, during Landlord's business hours, or such other hours designated by Landlord or its agent, (c) Tenant shall promptly thereafter provide to Landlord a copy of any such audit performed by or for Tenant, and (d) Tenant shall keep any information gained from such audit confidential and such information may be used by Tenant only in dealing directly with Landlord (or as may be required by law, by any court, or any other proceeding pursuant to which Tenant is required to release such information). If, after Landlord's reconciliation of its Common Area charge for any fiscal year, it shall be determined, as a result of any such audit, that Tenant has overpaid such charge for such reconciled fiscal year, such overpayment shall be credited first, to the payment of Rent due and unpaid, and the residue, if any, shall be credited against the next installment due from Tenant to Landlord under this Section, or at the expiration of the term, the residue, if any, shall be returned to Tenant.

Commercial Leasing from Soup to Nuts

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Ohio State Bar Association
April 22, 2021

Steven J. Davis
Thompson Hine LLP

ATLANTA | CHICAGO | CINCINNATI | CLEVELAND | COLUMBUS | DAYTON | NEW YORK | WASHINGTON, D.C.



Introduction

- A. A lease is both a contract and a conveyance.
- B. Common types of commercial leases:
 - 1. Office Leases
 - 2. Retail Leases
 - a. Shopping Centers
 - b. Free standing stores
 - c. Supermarkets
 - d. Restaurants/bars
 - 3. Industrial space
 - 4. Ground Leases
 - 5. License Agreements
 - 6. Miscellaneous Leases



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C. Commercial leases may be full-service leases (aka gross leases) or net leases.

1. Full service
2. Net lease
 - a. Triple net, or NNN leases
 - b. Double net lease
 - c. Single net lease, or net lease
 - d. "Net" is often used interchangeably with "triple net" or NNN. The terms "double net" and "single net" are not often used.



D. Lawyer's job—make sure that the lease is clear, unambiguous, well-organized, and complete and reflects the deal that the parties made.

1. Readability—not the same as "dumbing down" the lease.
2. Little things matter:
 - a. Language
 - b. Table of contents
 - c. Consistent definitions and index of defined terms
 - d. Frontloading
 - e. Section numbering
3. Sample clauses and forms



E. Frontloading.

Typical front-end terms in an office lease include:

1. Building and premises data
2. Term information
3. Base rent data
4. Amount of security deposit and amount and types of any other security for tenant's obligations, including the full legal names of any guarantors.
5. Tenant's *pro rata* share of operating costs.
6. Amount of any construction allowance or tenant improvement allowance and a cross-reference to any exhibits describing landlord's work or tenant's work.
7. Notice addresses for landlord, tenant, and the building manager, if any.
8. Address for payment of rent.

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F. Analyzing a draft lease.

1. Start from a checklist.
2. Accuracy.
3. Conformity to the term sheet.
4. Follow the money.
5. Client concerns.

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Planning the deal—before you get to the term sheet

- A. Long lead-time issues.
 - 1. Space plan.
 - 2. Who designs the tenant improvements?
 - 3. Who constructs tenant improvements?
 - 4. Lender approval.



- B. Landlord planning.
 - 1. Who is the landlord? (How is title held?)
 - 2. Rent and economics.
 - 3. Floor plate/floor plan drawings and space drawings.
 - 4. Construction allowance or budget.
 - 5. Selection of lease form.
 - 6. Possible conflicts with other leases (*e.g.* exclusive use clauses in retail space).
 - 7. Availability of the space.





C. Tenant planning.

1. Amount of usable space needed—not the same as rentable square feet.
 - a. Expansion options.
 - b. Type of option—right of first offer, right of first refusal, and straight option.
 - c. Contraction options.
2. Build-out.

Electric outlets, lighting requirements, any special HVAC or security needs, or other special needs.



3. Timing.

- a. Estimated delivery date/expiration date of old lease.
 - b. Remedies for late delivery.
 - c. Negotiate extension from current landlord?
 - d. Move-in or start-up needs.
4. Exit strategy—is there an available termination option? If not, what are the chances of negotiating a buyout?



D. Landlord Concessions

1. Build-out concessions – allowance or payment
2. Free parking.
3. Fitness/child care facility use.
4. Other building amenities (e.g. quasi-public employee cafeterias, high-speed internet, Wi-Fi).
5. Tenant representation costs.
6. Space planning and design costs.
7. Moving allowances.
8. Lease buy-outs.
9. Wiring/fiber optics.
10. Electronic charging station.
11. Emergency generator.



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E. Matters affecting bargaining power.

1. Soft market or tight market.
2. Time demands.
3. Credit.
4. Other factors.



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TERM SHEETS AND LETTERS OF INTENT

- A. Term sheet versus letter of intent.
 - 1. Downsides of using an LOI
 - 2. Time spent drafting/negotiating LOI might be better spent on the lease.
- B. Contents.
 - 1. Parties.
 - 2. Location and size of premises.
 - 3. Term, including renewals, if any.
 - 4. Delivery date.
 - 5. Design, build-out, and cost of tenant improvements.
 - 6. Guarantors.
 - 7. Tenant options (termination and expansion/downsizing).




PARTIES AND DATES

Preamble of the lease normally contains the names of the parties and the date of the lease. The date is usually the date that the last party (typically the landlord) signs the lease.

- A. Verify the full legal name of each party and make sure the names of the parties in the signature block and the acknowledgment match the names in the preamble.
- B. Remember that corporate shareholders and members of LLCs are not personally liable for obligations under leases signed by the corporation or the LLC. If you want a guaranty, negotiate for one.






C. Signatures and acknowledgements.

1. Ohio law mandates acknowledgement of landlord's signature for term exceeding three years (including all renewal options).
2. Make sure the names are correct and consistent.

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PREMISES

- A. Address
- B. Include legal description?
- C. Appurtenant rights
- D. Measurement and accuracy.

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TERM

The front-end should include the length of the term, the method for determining when the term starts and ends, and the existence, number, and duration of any renewal or extension options.

- A. Commencement date
- B. Expiration date
- C. If the lease sets forth fixed dates for the term to begin and end, late delivery of the premises will not delay the commencement or expiration date unless the lease expressly provides for adjusting those dates.
- D. Drafting tip: If the commencement and expiration dates cannot be determined from the face of the lease, the lease should state that as soon as the commencement date is known, the parties will sign a commencement date agreement setting forth the actual dates, provided that failure to sign the agreement will not delay the commencement or expiration of the term.
- E. Renewal or extension options.

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RENT

Rent typically consists of a fixed monthly amount and one or more variable amounts.

- A. Fixed rent
- B. Require that all rent be paid free of offsets, counterclaims, recoupments, or defenses (“pay now, fight later”), specify the address to which rent should be sent, and reserve the landlord’s right to change that address from time to time.
- C. Escalations
- D. CPI clauses
- E. The example provided combines a pre-determined increase with a CPI increase.
- F. Consider using leasehold appraisals as benchmark in longer-term leases.
- G. Retail leases typically require the tenant to pay percentage rent based on gross sales from the premises once such sales exceed a given threshold (often called the breakpoint).

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DEPOSITS AND OTHER SECURITY

Commercial leases are not governed by the Ohio Landlord Tenant Act, Ohio Rev. Code § 5321.

- A. Unlike residential landlords, commercial landlords are not responsible for the return of a security deposit collected by a prior owner.
- B. Case law suggests that (in the absence of a contrary lease provision), the original landlord remains responsible to return the deposit as pledgee and not as lessor.
- C. From a landlord's perspective, security deposit provisions should:
 - 1. Permit the landlord to commingle the security deposit with other funds
 - 2. Require the tenant to immediately restore the deposit if depleted
 - 3. Discharge the landlord from any duty to return the deposit
 - 4. Address changes in amount, if any



- D. If the tenant's credit is particularly weak, the landlord may want to require additional security in the form of a guaranty or a letter of credit.
 - 1. Recite that the guaranty is an inducement.
 - 2. Insist on guaranty of payment and performance, not merely of collection.
 - 3. Include waiver of the typical suretyship defenses.
 - 4. Execute with the same care and attention as the lease itself.





E. If there is a letter of credit ("LOC") in lieu of or in addition to the deposit:

1. Lease should require Tenant to increase face amount of LOC in advance of any rent escalations
2. Require that expiry date be at least 90 days after the lease term ends to allow for payment of unpaid taxes, repair and restoration costs, or other obligations that may survive the term expiration.
3. Consider including an evergreen clause.
4. Lease should permit LOC draw if renewal LOC is not delivered at least 30 days before expiry or if notice of non-renewal is received.



5. The lease should specify that the LOC be:

- a. Non-revocable;
- b. Fully transferable;
- c. Presentable in the city where the premises are located;
- d. Drafted so as to permit partial draws and permit Landlord to draw the full remaining amount if the Tenant fails to restore the LOC to its prior amount within a very short specified time following each and every draw;
- e. Non-documentary;
- f. Payable within two business days of draw;
- g. Governed by the International Standby Practices 1998 (ICC Publication No. 590), rather than by the Uniform Commercial Practices; and
- h. Optional (nice if you can get it):
 - i. Payable without requiring draws to be noted on the LOC; and
 - ii. Expressly permits presentment of facsimiles and copies of the draw requests.



TAXES, UTILITIES, MAINTENANCE, REPAIRS, AND SERVICES

- Full Service - Net Lease - Retail and Industrial - Office

A. Tenant's share

- Shopping center leases address tenant's share differently than office or industrial leases.
- 1. Tenant share of expenses expressed as a fraction of the gross leasable area (GLA).
- 2. Landlord may prefer to allocate the expenses according to tenant's share of gross occupied leased area (GOLA).
- 3. Whether GLA or GOLA used, the denominator is often based on in-line space only, deducting the square footage of any outparcels and any space leased to anchor tenants.
- 4. How are operating expenses (or in a retail lease, CAM) defined?
- 5. Negotiate for audit rights regarding the landlord's books and records?

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B. Taxes: Ohio real estate taxes are paid in arrears.

1. Handling of special assessments
2. Approaches to tax reductions and refunds.
3. How does the lease define real estate taxes?

C. Cost of maintenance, repairs, and services.

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D. Utilities.

1. Landlord will want to avoid liability for interruptions resulting from causes beyond its control and to limit liability for interruptions it causes.
2. Tenant's perspective: consider adding remedies, e.g. rent abatement or option to terminate, for protracted utility interruptions not caused by the tenant.
3. Note that any attempt by the landlord to restrict the tenant's choice of telephone or Internet service providers may violate federal law or FCC regulations.
4. From a tenant's perspective, if the lease does not make clear whether the utilities will be separately metered, ask.

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USE AND OCCUPANCY

- A. Permitted Use
- B. Continuous Operation
- C. Environmental Considerations
- D. Americans with Disabilities Act
- E. Legal compliance generally
 1. Tenant: exclude liability for preexisting violations or violations caused by third parties not subject to Tenant's control.
 2. If the Tenant is not leasing the entire building, Tenant may need access to other portions of the building to remedy violations.
 3. Specify who is responsible for complying with new laws or regulations enacted during the term of the lease.
- F. Personal property and fixtures
 1. Trade fixtures
 2. Responsibility for loss or damage to Tenant's personal property

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ASSIGNMENT AND SUBLETTING

An assignment transfers the tenant's entire interest in the lease. Under a sublease, the tenant retains part of the premises, part of the remaining term, or both. An assignment creates privity of estate between the landlord and the assignee, but not privity of contract. The sublease creates neither.

A. Restrictions against assignment or subletting

1. Absent express language, share transfers involving a corporate tenant or transfers of the equity in a partnership or LLC Tenant do not violate a restriction on assignment or subletting, nor do mergers or consolidations on the part of the tenant.
2. Consent to one assignment does not constitute a consent to later assignments.

B. Absent express release, original tenant remains liable for lease performance.

C. Permitted transfers.

D. Other bargaining points.

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INSURANCE AND INDEMNITY

The lease should specify what insurance the tenant must carry and may 1) require the landlord to carry certain insurance or 2) permit the landlord to carry such insurance as the landlord deems necessary. Make sure to review all insurance requirements with your client's insurance agent and your client's risk management department.

A. Indemnity.

1. Should also be reviewed and approved by your client's risk management department and insurance agent.
2. If possible, do not agree to indemnify for anything that your client can not control or insure or that is under the other side's control.
3. Avoid indemnifying Landlord against its own negligence.

B. Mutual Waiver of Claims and Subrogation Rights.

1. Waive all claims usually covered by "special form" policy.
2. Waivers from or in favor of other tenants.

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LEASING SPACE UNDER CONSTRUCTION

- A. Tenant improvements and alterations.
- B. Restrict Tenant from making subsequent alterations.
- C. Review of plans and specifications.
- D. Landlord improvements.
 - 1. Building standard condition or building standard improvements.
 - 2. How substantial completion determined (architect's certificate, temporary or permanent certificate of occupancy, other specific criteria, etc.).
 - 3. If both parties performing work – deadlines, coordination, etc.
 - 4. Consider need for additional insurance.
 - 5. Mechanics' liens.

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DEFAULT AND TERMINATION CLAUSES


Leases typically permit landlord to terminate the lease for any default by the tenant, whether or not material. Note, however, that a court of equity may refuse to permit termination for non-material defaults.

- A. Financial defaults.
 - 1. Rent and Notices
 - 2. Mail and Automatic Payments
 - 3. Compromise/Solutions
 - 4. Special payments (tax or operating expense adjustments, reimbursement of other landlord expenses)
- B. Curable non-financial defaults.
 - 1. Automatic extension to cure failures requiring extended cure period.
 - 2. Extended cure period should apply only to failures capable of being cured.
 - 3. Specify outside limits (e.g., 90 days) for the cure period.

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C. Non-curable defaults.

D. Insolvency defaults typically include the filing of a bankruptcy petition by or against the tenant, assignments for the benefit of creditors, dissolution, etc.

1. The tenant should negotiate for adequate time to obtain a dismissal of any involuntary petition.
2. Provisions creating an automatic default for bankruptcy are not enforceable.


E. What if Lease is silent as to Landlord's default?

1. Covenant of Quiet Possession
2. Constructive Eviction: in order to utilize Tenant must actually vacate and surrender possession.

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REMEDIES

A. Damages for loss of rent.

B. Rent acceleration.

C. Other damages.

D. Is Landlord obligated to mitigate damages?

E. Self-help eviction if no breach of peace occurs.

F. Late fees and interest.

G. Attorneys fees.

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BOILERPLATE DESERVES ATTENTION

A. Holdover.

B. Financing.

1. The SNDA:

- a. Subordinates Tenant's leasehold interest to the mortgage ;
- b. Protects the Tenant from loss of the lease if the mortgage is foreclosed;
- c. Assures the lender that the Tenant will recognize the lender or purchaser at foreclosure sale as the new Landlord; and
- d. Protects the new Landlord from claims or defenses that the Tenant had against the original Landlord.
- e. Provides that the Tenant will not be joined as a defendant in a foreclosure action with respect to the mortgage unless such joinder is required by law.

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2. Landlord's ability to refinance.

3. Battle of forms.

- a. Consider scope of non-disturbance right;
- b. Make Landlord party to SNDA that calls for paying rent directly to lender upon demand; and
- c. Modify the severability clause of the SNDA.


C. Estoppel Certificate.

1. Give Landlord POA to sign Certificate if Tenant fails to do so?
2. Consider time reasonably required for Tenant to review and sign.
3. If the lease is a major tenant asset, Tenant may also want the right to obtain an estoppel certificate from Landlord.

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D. Landlord Exculpation.


E. *Force Majeure*.

1. Keep the one-sided clause but give the tenant an extension for curing certain defaults if *force majeure* prevents timely performance of the Tenant's obligation, as discussed above under default.
2. Alternatively, make the *force majeure* clause reciprocal but clarify that it does not excuse the timely payment of rent or other financial obligations.
3. *Force majeure* considerations in view of COVID-19 (and future pandemics):
 - A. Two issues: (1) whether existing lease clauses excuse rent payment/performance of other obligations by Landlord or Tenant in the case of a pandemic-related shut down and (2) how should clauses for new leases be structured in view of the pandemic risk?

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B. Analysis of Existing Leases

1. Pandemics and *force majeure*
2. Interpretation of catchall clause, e.g. "and any other similar event"
3. What if performance is not impossible but more difficult/risky?
4. Does the clause exclude monetary obligations (most notably, payment of rent) from the excused obligations?
5. *Force majeure* clauses potentially impact a range of obligations, in addition to rent/other monetary obligations.
6. Whether insurance coverage is available to offset the Landlord's lost rental income (or cover the tenant's rent obligation) is a separate issue but it may have a practical impact on the parties' positions regarding the applicability of the *force majeure* clause.

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C. Drafting/Negotiating of New Clauses

1. The experts tell us that COVID-19 is not over and the risk of future pandemics is ever present. How should risks be allocated between the parties in view of that reality?
2. How much discretion should be allowed to either party to voluntarily reduce/suspend operations because of pandemic risks? How is the rent obligation affected (if all) by a voluntary reduction/suspension?
3. We may see the emergence of standalone pandemic clauses, in addition to the traditional *force majeure* clause.

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F. Joint preparation clause.

G. No Waiver Provision.

H. Lease Memorandum.

I. Landlord's Lien.

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Attachments

EXHIBIT A—SAMPLE COMMENCEMENT DATE AGREEMENT
EXHIBIT B—SAMPLE SNDA
EXHIBIT C—SAMPLE PROVISIONS

- Rent and Additional Rent (Office)
- Exclusions from Operating Expenses (Tenant's Version)
- Rent and Additional Rent (Retail) (Short-Form)
- Percentage Rent-Retail (Landlord)
- Percentage Rent - Partial Year (Tenant)
- Exclusions from Gross Sales (Tenant)
- Exclusions from Cam Costs (Tenant)
- Tenant's Audit Right

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QUESTIONS?

Steven J. Davis
Thompson Hine LLP
Austin Landing I,
10050 Innovation Drive, Suite 400
Dayton, Ohio 45342-4934
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Chapter 5: Tax, Title, and Liens

Gregory S. Shak, Esq.
Oxford Commercial Title Agency
Columbus, Ohio

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Tax, Title, and Liens—PowerPoint Presentation	1
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TAX, TITLE, AND LIENS

AN OVERVIEW OF TITLE SERVICES

Presented By:

Greg Shak, Esq.

Underwriting Counsel

Oxford Commercial Title Agency

Direct: 380.867.2882 | greg.shak@oxfordcommercialtitle.com

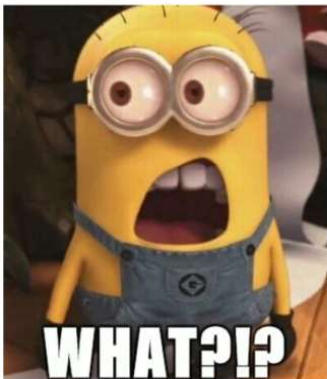
WHAT IS TITLE INSURANCE?



Title Insurance is...

In broad terms, it is a modern method of providing evidence of good, marketable title to insureds that are buying (O.P.) and/or financing (L.P.)

...Marketable WHAT?



MARKETABLE TITLE...

is title that is free from such defects or encumbrances and is of such condition that a reasonably prudent person would ACCEPT the title being conveyed.



A title insurance policy is a policy of INDEMNITY. The underwriter (First Am, ORT, Stewart, WFG) will indemnify (protect) the insured against loss if:

Title turns out to be anything other than what was shown on the title policy (SUBJECT TO the limitations by the terms of the policy & the EXCEPTIONS set forth within the policy)

We must accurately set details out within the Title Products!

- In 1868, **Watson v. Muirhead** was heard by the Pennsylvania Supreme Court.
- **Muirhead (Plaintiff)** had lost his investment in a real estate transaction as the result of a prior lien on the property.
- **Watson (Defendant)**, the conveyancer, had discovered the lien prior to the sale but told Muirhead the title was clear
- **Watson's lawyer** had (incorrectly) determined that the lien was not valid.

WHAT IS TITLE INSURANCE?

PRIOR TO 1876

Licensed Conveyancer

- **Pennsylvania Supreme Court** ruled that there was no negligence on the **Conveyancer's** part and dismissed the case.
- **Watson**, the innocent purchaser who suffered financial damages because of the liens on the property, had no recourse.
- As a result of the decision in **Watson v. Muirhead**, the Pennsylvania legislature passed an act "to provide for the incorporation and regulation of title insurance companies".
- First title company was founded in 1876.

WHAT IS TITLE INSURANCE?

HISTORY OF TITLE INSURANCE: 1876

Licensed
Conveyancer

WHAT IS TITLE INSURANCE?

NEW TYPE OF INSURANCE IN 1876

1. **Responsibility without proof of negligence**
2. **Financial protection – reduced risk of insolvency**
3. **Assumption of risks beyond just the public records**

Licensed
Conveyancer

TITLE INSURANCE V. PROPERTY & CASUALTY INSURANCE

Title Insurance insures the past as of the effective date of the Policy

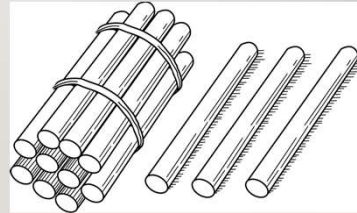
Property & Casualty Insurance insures against future risks


TITLE INSURANCE – INSURING THE PAST

- One time policy, paid at closing
- Insures against matters occurring from that point backwards
- Insures against known and unknown risks
- Never expires, so you are always covered for the time period prior to you owning the property

TITLE EXAMS

- Examiner searches 60-100+ years of public records
- PROPERTY = BUNDLE OF RIGHTS
 - Possession
 - Control
 - Exclusion
 - Enjoyment
 - Disposition
- YOU CAN ONLY CONVEY WHAT YOU OWN
 - Chain of Title shows list of prior owners
 - Property is subject to any unreleased encumbrances, easements burdening the property, rights to purchase the property and restrictions against certain uses of the property





GENERAL INDEX OF DEEDS

PARTIES		Kind of Deed.	Date of Deed.	AMOUNT OF CONSIDERATION.	
GRANTOR	GRANTEE			Dols.	Cts.
Boat Henry		Warranty	Sept. 15, 1893	12.00	00
Flora James B.		Free Simple	Nov. 4th, "	40	00
Pickett Henry B.		Warranty	Dec. 14th, 1893	300	00
Pierce Andrew J.		"	Nov. 18, "	200	00
Leber James		"	Nov. 18th, "	150	00
Almsadge Theodore M.		"	Sept. 16, 1897	150	00
Ever William		"	Nov. 25th, 1897	630	00
For John M.		"	Dec. 29, 1897	800	00
James N.		"	Jan. 10, 1897	350	00
W. & N.		"	June 27, 1893	150	00
James		"	Nov. 25th, "	30	00

Public Records Searches

TITLE EXAMINATION

THE TITLE SEARCH PROCESS

COUNTY AUDITOR & TREASURER
(DETERMINES) (COLLECTS)

- Auditor:
- Recent Transfers
- Present Valuations
- CAUV Recoupment
- Homestead Exemptions
- BOR Cases
- Assmt Info (Current & Future)
- Tax Amounts
- Payment Status
- Delinquent Balances



TAX MAP ADMIN DEPT – ENGINEER'S OFFICE

- Responsible for maintaining a current set of property ownership maps.
- Assists the County Auditor in keeping an accurate tax base.
- (Legal description approvals)



COUNTY RECORDER

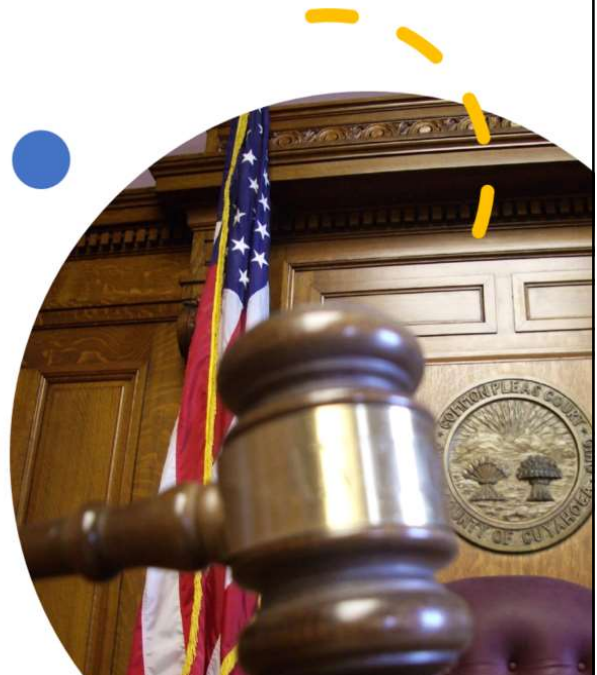
- Deeds
- Mortgages
- NOCs
- POAs
- Easements
- Leases
- Mechanic's liens
- Federal Tax Liens
- Medicaid Liens
- Child Support Liens
- BWC Liens
- Financing Statements
- Plats
- Condo Decs
- Land Contracts

...and more



CLERK OF COMMON PLEAS COURT (& Sometimes Municipal Court – WHY?)

- Pending Litigation (Foreclosures, Quiet Title Actions, Wrongful Death, etc.)
- Divorce/Dissolution Cases
- Certificate of Judgment
- (COMMON PLEAS TO ATTACH TO R.E.)
- State Tax Liens
- Alimony/Spousal Support Liens
-AND MORE



THE CHAIN OF TITLE

040-004295 BEING 1.375 ACRES OUT OF 1.457 ACRES OF PARCEL 3 OF HNB TR 3721, PAGE 479
JACKSON TWP NKA GROVE CITY OFF RELOCATED STRINGTOWN ROAD VMS 8231

ALLEN E. MCDOWELL AND MARY JEANNETTE MCDOWELL
TO
ROBERT F. SMITH AND ADA SMITH, FILED NOVEMBER 14, 1942 IN DEED BOOK 1197, PAGE 299 (RESTRICTION),
AS TO 1.97 ACRES
TO
WILLIAM RADER AND LETITIA RADER, FILED NOVEMBER 14, 1942 IN DEED BOOK 1197, PAGE 300, AS TO 1.97
ACRES
TO
GEORGE W. CATRON AND MARTHA CATRON, FILED AUGUST 23, 1948 IN DEED BOOK 1455, PAGE 326, AS TO
1.97 ACRES

GEORGE W. CARTON
TO
MARTHA CATRON, FILED MARCH 23, 1950 IN DEED BOOK 1544, PAGE 402, AS TO 1.97 ACRES

MARTHA CATRON AND GEORGE W. CATRON
TO
BELLE GLADE COMPANY, FILED AUGUST 19, 1965 IN DEED BOOK 2671, PAGE 70, AS TO 1.97 ACRES
TO
JOHN P. KURGIS AND LARRY N. WADE, FILED JUNE 27, 1968 IN DEED BOOK 2907, PAGE 255, AS TO 1.97 ACRES

LARRY N. WADE
TO
1/2 INT. HUNTINGTON NATIONAL BANK, TRUSTEE, FILED APRIL 23, 1979 IN DEED BOOK 3721, PAGE 469,
PARCEL 3



WARRANTIES OF TITLE

- **General Warranty Covenants**
- **Limited Warranty Covenants**
- **Fiduciary Covenants**
- **Quitclaim Deeds**

Title Search Received...Now What??

A licensed Title Officer underwrites EVERY search to identify & analyze risks associated with title defects.

When issuing title insurance, defects generally fall in 3 “buckets”:

- The risk is small & no exception is required;
- The risk is too substantial and must be eliminated completely; or
- We need to minimize the risk to a level that is acceptable to the U/W.

The T.O. determines which search result items must be disclosed and how.

TITLE OVERVIEW

- **COMMITMENT**
 - Schedule A: Insured Interest(s) and amount of proposed coverage
 - Schedule BI: Requirements
 - Schedule BII: Exceptions
 - Jacket: Definitions, Exclusions and other terms
- **CONTRACTUAL TIMELINES**
 - Sets delivery & objection deadlines
 - Failure to object typically results in a matter being a “Permitted Exception”
- **OBJECTION LETTERS & ENDORSEMENTS**
 - Object to unacceptable BII Exceptions
 - Request additional coverages over specific risks
- **PROFORMA POLICIES**
 - Shows coverage scheduled to be issued at close

TITLE INSURANCE

Title policies –
protects against loss for:

TITLE POLICIES – PROTECTS AGAINST LOSS FOR:

- Title being other than as insured
- Defects in the chain of title and otherwise
- Lack of Access
- Unmarketability of Title
- Off Record Risks (fraud, forgery, duress, incapacity, impersonation, missing heirs, undelivered Deeds, undisclosed Marriage, etc.)
- Pays for attorneys fees and defense costs
- Exclusions from coverage:
 - Building and zoning code
 - Police power and eminent domain
 - EPA liens
 - Matters known to the insured
 - Taxes and assessments
 - Parties in possession
 - Covenants, conditions, and restrictions
- Exceptions to coverage: **READ THE COMMITMENT!**

If we “insure over” concerns, such as a prior
owner mortgage...

what exactly does that mean?



Marketable Title vs. Insurable Title

- **Marketable Title** = Nothing objectionable will remain on title
- **Insurable Title** = Title contains a defect, but the underwriter has agreed to “insure over” the matter prior to closing. No action will be taken in the public records to clear the defect.

THINGS TO REMEMBER
WITH INSURABLE TITLE...

NON-TITLE INSURANCE

Attorney Opinion Letters & Title Search Reports

- Attorney opinion letters and Title Search Reports are NOT insurance
- They are for matters of record ONLY
- They are usually limited in recourse.. i.e., negligence of the abstractor or negligence of the opinion of the attorney
- For Attorney Opinion Letters specifically:
 - Standards of attorneys are different than for title insurers.
 - The statute of limitations is one year.
 - Coverage could be gone altogether if attorney ceases practice.



The TITLE PRODUCT is separated into 2 pieces

1. COMMITMENT

The COMMITMENT is a contractual offer to issue a policy in the future based upon the information contained within the commitment IF certain requirements are satisfied.

The commitment contains pertinent info such as: WHO will be insured; the \$ amount to be insured; WHAT will be insured, etc.

SCHEDULE BI (REQUIREMENTS) - "ROAD MAP"

SCHEDULE BII (EXCEPTIONS) – includes EVERYTHING that impacts the real estate. This includes use rights, liens, restrictions that limit the owner's use of the land, etc.

2. POLICY

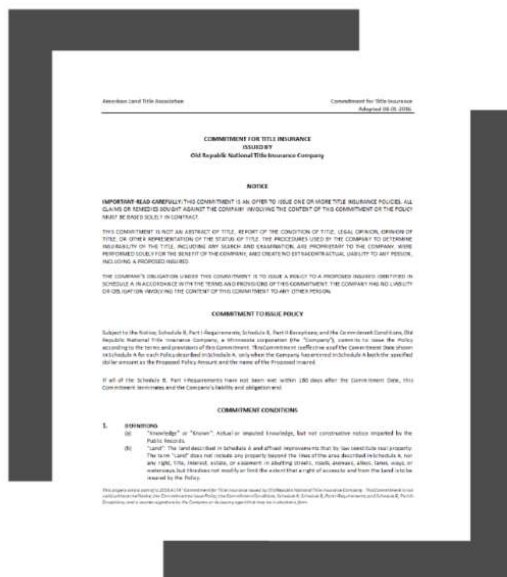
The POLICY contains the insurance details, including the rules related to coverage & is issued AFTER the instrument creating the insured's interest is recorded.

Owner's Policy = Deed

Loan Policy = Mortgage

Documents collected at closing have a direct impact on which exceptions remain on each final policy.

If we miss EXCEPTING a Covered Risk (item covered by the policy) and the insured suffers a loss, a claim will result.

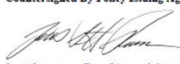


The Jacket

- Contains the legal "stuff"
- Commitment is a contract & any legal relief will be sought under Contract Law.
- Obligations terminate 180 days from "Commitment Date" if all REQS not met.
- Important definitions
- Limitations of Liability...

SCHEDULE A

INTEREST TO BE INSURED

American Land Title Association	Commitment for Title Insurance Adopted 08-01-2016
Transaction Identification Data for reference only: Issuing Agent: Northwest Title Family of Companies, Inc. Issuing Office: 4200 Regent Street, Suite 210, Columbus, OH 43219 ALTA® Universal ID: 1009256 Loan ID Number: Commitment Number: Test-CWhite Issuing Office File Number: Test-CWhite Property Address: 123 Main Street, Byesville, OH 43723 Revision Number: 20171107-0348 PM	
SCHEDULE A	
1. Commitment Date: November 3, 2017, 07:00 am	
2. Policy to be issued:	Amount
a. <input checked="" type="checkbox"/> ALTA Homeowner's Policy (12/02/2013)	\$135,000.00
Proposed Insured: Bobby Brown and Betty Brown	
b. <input checked="" type="checkbox"/> ALTA Loan Policy (06/17/2006)	\$114,750.00
Proposed Insured: Peoples Bank, ISAOA/ATIMA	
3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple.	
4. Title to the Fee Simple estate or interest in the Land is at the Commitment Date vested in:	
Scott Stevenson, Trustee of the Scott Stevenson Trust dated 1/1/12	
Source of Title: General Warranty Deed, recorded 03/21/2012 in OR Vol. 123, Page 456, of the Guernsey County, Ohio records	
5. The Land referred to in this Commitment is described as follows: SEE ATTACHED EXHIBIT "A"	
Countersigned By Policy Issuing Agent:	
	
Scott Stevenson, Esq., Licensed Agent Northwest Title Family of Companies, Inc. www.nwtitle.com	
FOR COMPANY REFERENCE PURPOSE ONLY, NOT AN INSURING PROVISION. The Company has not verified, does not insure and makes no representation that the Property Address above or the Tax ID within this Commitment is guaranteed for the above insured property. It is only reflective of what the County or Insured has represented to the Company.	

THE TITLE INSURANCE COMMITMENT

SCHEDULE A:

- Insurable Interest - "Snapshot of Ownership"
- Effective Date is Important!
- The date of the commitment is important because it tells us how old the information is within this document.
- This date gives us the date and time of the search. We're offering a picture of the title up to that date and time.
- Anything beyond that date is considered in the "gap" (the gap between the date of the commitment and the date of the final policy being issued).

American Land Title Association <small>Commitment for Title Insurance Adopted 08-01-2016</small>	<h1 style="margin: 0;">THE TITLE INSURANCE COMMITMENT</h1>								
<p><small>Transaction Identification Data for reference only:</small></p> <p>Issuing Agent: Northwest Title Family of Companies, Inc. Issuing Office: 4200 Regent Street, Suite 210, Columbus, OH 43219 ALTA® Universal ID: 1009256 Loan ID Number: _____ Commitment Number: Test-CWhite Issuing Office File Number: Test-CWhite Property Address: 123 Main Street, Byesville, OH 43723 Revision Number: 20171107-0348 PM</p>	<h2 style="margin: 0;">SCHEDULE A: "Snapshot of Ownership"</h2> <p>Policies Being Issued:</p> <p>Owner's Policy (2006): Used for vacant land, residences with large acreage, commercial use property</p> <p>Homeowner's Policy:</p> <ul style="list-style-type: none"> Provides greater protections for residential properties Adds 29 covered risks that a basic owner's policy does not cover Policy coverage can increase up to 15% along with appreciation of home's value Provides post-policy fraud protection <p>Loan Policy:</p> <p>This insures the Mortgage holder of their first lien position and that they will be able to foreclose the title without title defects clouding that attempt</p>								
<p style="text-align: center;">SCHEDULE A</p> <p>1. Commitment Date: November 3, 2017, 07:00 am</p> <p>2. Policy to be issued: Amount</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">a. <input checked="" type="checkbox"/> ALTA Homeowner's Policy (12/02/2013)</td> <td style="width: 20%; text-align: right;">\$135,000.00</td> </tr> <tr> <td colspan="2">Proposed Insured: Bobby Brown and Betty Brown</td> </tr> <tr> <td>b. <input checked="" type="checkbox"/> ALTA Loan Policy (06/17/2006)</td> <td style="text-align: right;">\$114,750.00</td> </tr> <tr> <td colspan="2">Proposed Insured: Peoples Bank, ISAOA/ATIMA</td> </tr> </table> <p>3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple.</p> <p>4. Title to the Fee Simple estate or interest in the Land is at the Commitment Date vested in:</p> <p>Scott Stevenson, Trustee of the Scott Stevenson Trust dated 1/1/12</p> <p>Source of Title: General Warranty Deed, recorded 03/21/2012 in OR Vol. 123, Page 456, of the Guernsey County, Ohio records</p> <p>5. The Land referred to in this Commitment is described as follows: SEE ATTACHED EXHIBIT "A"</p> <p style="text-align: center;"><small>Countersigned By Policy Issuing Agent:</small></p> <div style="text-align: center;"> Scott Stevenson, Esq., Licensed Agent Northwest Title Family of Companies, Inc. www.nwtitle.com </div> <p><small>FOR COMPANY REFERENCE PURPOSE ONLY. NOT AN INSURING PROVISION. The Company has not verified, does not insure and makes no representation that the Property Address above or the Tax ID within this Commitment is guaranteed for the above insured property. It is only reflective of what the County or Insured has represented to the Company.</small></p>	a. <input checked="" type="checkbox"/> ALTA Homeowner's Policy (12/02/2013)	\$135,000.00	Proposed Insured: Bobby Brown and Betty Brown		b. <input checked="" type="checkbox"/> ALTA Loan Policy (06/17/2006)	\$114,750.00	Proposed Insured: Peoples Bank, ISAOA/ATIMA		
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Proposed Insured: Peoples Bank, ISAOA/ATIMA									

<div style="background-color: black; color: white; border-radius: 50%; width: 150px; height: 150px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> <div style="text-align: left; padding: 10px;"> <p>EXHIBIT "A" – LEGAL DESCRIPTION</p> </div> </div>	<p style="text-align: center;">EXHIBIT "A"</p> <div style="border: 1px dashed black; padding: 10px; margin: 10px 0;"> <p>Situated in the State of Ohio, in the County of Guernsey and in the City of Byesville:</p> <p>Being Lot Number Twenty-three (23), of WHATEVER SUBDIVISION, PHASE ONE, as the same is numbered and delineated upon the recorded plat, of record in Plat Book 1, Page 300 in the Recorder's Office of Guernsey County, Ohio.</p> </div> <ul style="list-style-type: none"> INSURES THE LEGAL DESCRIPTION <ul style="list-style-type: none"> NOT ADDRESS(ES) OR PARCEL(S) APPURTENANT EASEMENT RIGHTS ARE ALSO INSURABLE (RIGHTS BENEFITTING THE PROPERTY, SUCH AS ACCESS, UTILITIES, PARKING, ETC.)
---	---

THE TITLE INSURANCE COMMITMENT

Owner's Policy (2006) vs. Homeowner's Policy:

Coverage Items	ALTA Residential (Plain Language)	New Homeowner's Policy
Post Policy Forgery Protection	No	Yes
Enhanced Access Coverage	No	Yes
Building Permit Violations	No	Yes
Subdivision Map Act Coverage	No	Yes
Restrictive Covenant Violations	No	Yes
Mineral Extraction Coverage	No	Yes
Map Inconsistencies Coverage	No	Yes
Coverage Extended to Living Trusts	No	Yes
Enhanced Encroachment Coverage	No	Yes
Automatic Inflation Protection (5 years)	No	Yes 10% Per Year

SCHEDULE BI

REQUIREMENTS

SCHEDULE BI

- Requirements to ensure the transaction is completed correctly
 - Pay what is owed
 - Record instruments to create the interests to be insured
 - Clear liens against the current owner or any prior owners
 - Verify no future title risks are inherited by the Insured
- Review and approve entity documents
 - Confirm proper formation and Good Standing of all parties
 - Review governance provisions
 - Verify the authority of the signing representative on behalf of each party

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - a. Duly authorized, executed, and recordable Affidavit of Successor Trustee, pursuant to ORC 5302.171 (amended by Substitute Senate Bill No. 262 effective 3/18/97), to be executed by the Successor Trustee(s), for filing with the Guernsey County Recorder, stating the following:
 - i) The name of the immediately preceding trustee and any co-trustees;
 - ii) The addresses of all trustees;
 - iii) A reference to the deed or other instrument vesting title in the trustee(s);
 - iv) A description of the real property in the trust;
 - v) A certified copy of the death certificate, if original trustee is deceased; or
 - vi) An original letter of resignation, if original trustee has resigned.
 - b. Duly authorized, executed, and recordable Memorandum of Trust.
 - c. Duly authorized, executed, and recordable Fiduciary Deed, filed of record and creating the estate or interest to be insured, from conveying title to the Buyer Proposed Insured under Item 2 of this Commitment.
 - d. Duly authorized, executed, and recordable Deed of Trust from Bobby B. Brown and Betty Brown to Peoples Bank (Proposed Lender) in the amount identified under item 2 in Schedule A of this Commitment.
5. Payment of taxes, charges, and assessments levied and assessed against subject premises, which are due and payable.
6. All parties to the transaction must provide identification sufficient to comply with the USA Patriot Act as determined by their lender and the policy-issuing agent.
7. Duly executed Owners Affidavit covering matters of title, in a form acceptable to the Company.
8. Further exceptions and/or requirements may be made upon review of the proposed documents and/or upon further ascertaining the details of the transaction.

SCHEDULE BI – REQUIREMENTS “ROAD MAP”

THE TITLE INSURANCE COMMITMENT

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

- a. Duly executed, recordable Affidavit of Facts In Aid of Title prepared by the Company to correct the following title defect: The General Warranty Deed recorded in OR Vol. 111, Page 300 from William Guy (Grantor) to Mary Jo Miller (Grantee) is missing a marital status for the Grantor. If William Guy was unmarried at the time of conveyance (or was married but is now unmarried), then an Affidavit of Facts In Aid of Title is necessary. If William Guy was and is still is married, then a QuitClaim Deed from the spouse in lieu of an Affidavit is required.
- b. Duly authorized, executed, and recordable Memorandum of Trust.
- c. Duly authorized, executed, and recordable Fiduciary Deed, filed of record and creating the estate or interest to be insured, from conveying title to the Buyer Proposed Insured under Item 2 of this Commitment.
- d. Duly authorized, executed, and recordable Mortgage from Bobby Brown and Betty Brown to Peoples Bank (Proposed Lender) in the amount identified under Item 2 in Schedule A of this Commitment. (NOTE: Said Mortgage must contain a release of Dower Rights from the Spouse of Mortgagor not shown on title, if any, and/or a release of any interest of any titleholder(s) shown in Paragraph # 4 of Schedule A of this Commitment.)

SCHEDULE B-I: Requirements

These are the Title Agent's requirements before they will be in a position to provide a Title Insurance Policy.

THE TITLE INSURANCE COMMITMENT

10. Seller must provide a Certification of Trust pursuant to O.R.C. 5810.13, or the Seller must provide the appropriate provisions of the Trust Agreement. In addition, a Memorandum of Trust satisfactory to the Company must be executed and recorded.

11. With regard to Typical Entity, LLC (the "LLC"), the following is required:

- a) Operating Agreement signed by all Members, or Resolution signed by all Members, either of which must authorize the sale/purchase/mortgage of real estate and state who can sign on LLC's behalf;
- b) Articles of Organization filed with Secretary of State; and
- c) Certificate of Good Standing or Verification of Good Standing with the Secretary of State.

SCHEDULE B-I: Requirements

These are the Title Agent's requirements before they will be in a position to provide a Title Insurance Policy.

SCHEDULE BII

EXCEPTIONS

COMMITMENT – SCHEDULE BII

- General Exceptions

- Title Risks that are not observable in the Public Records

- “Gap”

- Period of time after the Commitment Effective Date

- Future Taxes & Assessments

- Parties in Possession

- Survey matters

- Mechanic Liens

- Retroactive Revaluation

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date but prior to the date the Proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes or special assessments which are not shown as existing liens by the Public Records.
3. Rights or claims of parties in possession not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land. The term “encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
5. Any claims for mechanics’ or materialman’s liens that may be recorded by reason of a recent work of improvement under construction and/or completed at the date hereof.
6. Any tax increase occasioned by retroactive revaluation arising out of the change in land usage, on account of errors or omissions and changes in the valuation of the property by legally constituted authorities.

COMMITMENT SCHEDULE BII (CONT'D)

- General Exceptions (cont'd)

- Acreage

- Administrative Fees

- Oil, Gas & Subsurface Rights

- Physical characteristics

- Adjacent public roadways

- Unrecorded Leases

7. Representations of the acreage or area in the property descriptions in Schedule A or on the survey, if any.
8. Covenants, conditions and restrictions and other instruments recorded in the Public Records purporting to impose a transfer fee or a conveyance fee payable upon the transfer of an interest in real property or payable for the right to make or accept such a transfer, and any and all fees, liens, or charges, whether recorded or unrecorded, if any, currently due and payable or that will become due and payable, and any other rights deriving therefrom, that are assessed pursuant thereto.
9. Oil and gas leases, pipeline agreements or any other instruments related to the production or sale of oil and gas which may arise subsequent to the date of the Policy.
10. Any lease, grant, exception or reservation of minerals or mineral rights together with any rights appurtenant thereto.
11. Any map/plat furnished is being done so as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.
12. Rights of public to use those portions of the Land lying within the confines of public roads and highways.
13. Rights of tenants in possession as tenants only under unrecorded leases.

THE TITLE INSURANCE COMMITMENT

American Land Title Association

Commitment for Title Insurance
Adopted 08-01-2016

SCHEDULE B, PART II

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.
2. Any facts, rights, interests, or claims that are not shown in the public records but that could be ascertained by an inspection of the land or by making inquiry of persons in possession of the land.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records. NOTE: The Company requires that survey evidence be provided to its satisfaction in order to delete the Standard Exception for Survey Matters.
4. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown in the public records.
5. Rights of parties in possession of all or any part of the premises, including, but not limited to, easements, claims of easements or encumbrances that are not shown in the public records.
6. The lien of the real estate taxes or assessments imposed on the title by a governmental authority that are not shown as existing liens in the records of any taxing authority that levies taxes or assessments on real property or in the public records.

SCHEDULE B-II: Standard Exceptions

- Many of which may be removed or modified for the final policy.
- Lenders often require these to be removed completely on their Loan Policy.
- Most Common Requests:
 - #3: Survey Coverage
 - #4: Mechanics' Lien Coverage

THE TITLE INSURANCE COMMITMENT

SCHEDULE B-II Exceptions:

- **Removal of the Survey Exception Requires:**
 - **“Some Evidence of a Survey” under Ohio Regulatory Statutes (Ohio Department of Insurance)**
 - **\$50 for removal of Exception from Loan Policy**
 - **\$100 for removal of Survey Exception from Owner’s policy, but if a Loan Policy issued simultaneously, the additional fee for the Loan Policy is waived.**

OVERVIEW OF THE SURVEYING PROCESS


- **“Evidence of Survey”**
 - Plats
 - Mortgage Location Survey
 - GIS Map
 - ALTA Survey
 - Boundary Survey
 - Site Plans (for Land Under Development)
- **Prior surveys with Survey Affidavit from existing owner**
 - No new improvements since prior survey date
 - No known boundary disputes

[illegible]

MORTGAGE LOCATION SURVEY

The diagram illustrates a mortgage location survey for a property. The property is bounded by a north line (N 01°15'00" E 120.00'), a south line (S 01°15'00" W 120.00'), an east line (S 88°40'00" E 44.00'), and a west line (N 88°40'00" W 44.00'). The property contains a 2-story frame dwelling with a footprint of 36.1' x 18.2'. A concrete driveway is located to the west of the dwelling, with a width of 40.5'. The dwelling has a porch of 4.8' x 6.2'. The diagram also shows a Y.C.L. 15480 and a R/W line.

GIS MAP



An aerial photograph of a residential neighborhood, likely from a GIS application. A red rectangular boundary is drawn around a specific property. Inside this boundary, a green pin is placed on the roof of a house. The surrounding area includes other houses, lawns, and trees. A road with a white car is visible at the top of the image.



ALTA SURVEY

1-14. ITEMS ARE NOT PLEISTABLE.

7. SLOPE AND DRAINAGE RIGHTS TO THE STATE OF NEW JERSEY AS CONTAINED IN BOOK 1153 PAGE 305, BURLINGTON COUNTY CLINTON OFFICE, MAY OR MAY NOT AFFECT THE SUBJECT PARCEL, UNABLE TO PLOT LOCATION FROM THE SUPPLIED DOCUMENTS.

8. RIGHTS GRANTED TO SOUTHERN PIPELINE COMPANY AS SET FORTH IN BOOK 1153, PAGE 305, BURLINGTON COUNTY CLINTON OFFICE, MAY OR MAY NOT AFFECT THE SUBJECT PARCEL, UNABLE TO PLOT LOCATION FROM THE SUPPLIED DOCUMENTS.

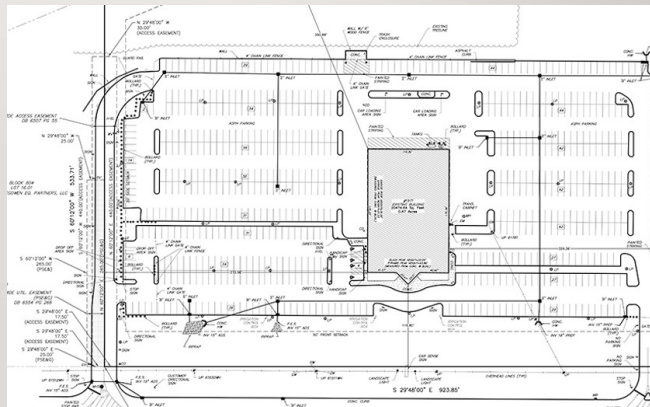
9. RIGHTS GRANTED TO COLUMBIA PIPELINE COMPANY AS SET FORTH IN BOOK 1061, PAGE 353, BURLINGTON COUNTY SLOAN'S OFFICE, MAY OR MAY NOT AFFECT THE SUBJECT PARCEL, UNABLE TO PLOT LOCATION FROM THE SUPPLIED DOCUMENTS.

10. ALL MATTER SHOWN ON A CERTAIN WAY ENTITLED "RELOCATION PLAN, SLOAN BOA LOTS 15, 16 & 16.01, INTERSECTION COMPLEX, BURLINGTON COUNTY, NJ, LOTS WERE LEGALLY GRANTED AND INTERESTED BY SLOAN AND PRESENTED IN THE BURLINGTON COUNTY CLINTON OFFICE IN NEEDS OF RECORD IN 2022 BOOK EARL, PAGE 824.

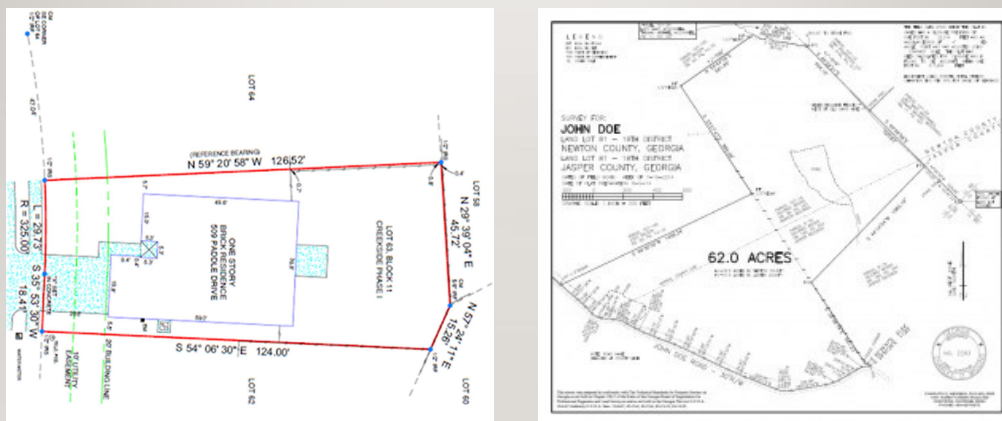
11. RESPECTIVE COVENANT AND EASEMENT AGREEMENT AS CONTAINED IN BOOK EARL, PAGE 793, BURLINGTON COUNTY CLINTON OFFICE, COVENANT AGREEMENT AS DESCRIBED IN SAID DOCUMENT BENEFITS SUBJECT PROPERTY, EASEMENT IS SHOWN ON SURFACE.

12. RIGHTS PUBLIC AND PRIVATE IN ALL ROADS, STREETS, LANES, AVENUES OR HIGHWAYS BEARING, CROSSING OR ADJACENT THEREIN IN QUESTION.

- [illegible]



BOUNDARY SURVEY



THE TITLE INSURANCE COMMITMENT

SCHEDULE B-II Exceptions:

- **Mechanics' lien:** a lien placed on property by a contractor or subcontractor for unpaid labor or supplies.
- **Construction loan:** should not disburse without a physical inspection of the property to determine that no work has been started on the job site since a mechanic's lien, unlike other liens, becomes a priority from the time the work starts, not when the lien is filed.

Affidavit of Mechanics' Lien

1. 60-days to file Affidavit for Mechanics' Lien (Home Construction Work):

If the lien arises in connection with a one- or two-family dwelling or a residential condominium property, the affidavit must be filed sixty days from the date on which the last labor or work was performed or material furnished by the person claiming the lien;

2. All other types of work (except oil and gas) 75-days to file:

The affidavit must be filed within seventy-five days from the date on which the last of the labor or work was performed or material furnished by the person claiming the lien.

Priority of Mechanics' Lien:

The Lien is effective from the date that the "First visible work or labor is performed or the first materials are furnished" to the property!

THE TITLE INSURANCE COMMITMENT

SCHEDULE B-II Exceptions:

Removal of the Mechanics' Lien Exception:

Cost:

If there is a Risk: 40% of the original rate of the policy being issued with a minimum of \$500

If not a Risk: 10% of the original rate of the policy being issued with a minimum of \$250.

Recording Requested By and When Recorded Mail To:

Space above this line for recorder's use only
(To be recorded in the county recorder's office
in the county in which the property is located.)

MECHANICS LIEN

NOTICE IS HEREBY GIVEN that Claimant _____ (legal name and address), claims a lien for labor, service, equipment, or material under Section 8000 et. seq. of the Civil Code of the State of California, upon the premises hereinafter described, and upon every estate or interest in such structures, improvements and premises held by any party holding any estate therein. The work was furnished for the construction of those certain buildings, improvements, or structures, now upon that certain parcel of land situated in the County of _____, State of California, said land described as follows:

**STREET ADDRESS:
and/or
LEGAL DESCRIPTION:**

The lien is claimed for the following labor, service, equipment or material furnished by the Claimant: _____ (describe generally). Claimant is owed \$ _____ for work furnished to the work of improvement, after deducting all just credits and offsets, plus interest at the legal rate from the date of this lien. The name of the person or company by whom Claimant was employed, or to whom Claimant furnished the work is: _____

The name(s) and address(es) of the owner(s) or reputed owner(s) of the real property is/are:

Date: _____ Name of Claimant: _____
By: _____ Signature
Print Name & Authorized Capacity

Verification

I, the undersigned, declare: I am the _____ (authorized capacity/title), for the Claimant named in the foregoing claim of mechanics lien. I am authorized to make this verification for the Claimant. I have read the foregoing claim of mechanics lien and know the contents thereof, and the

“SPECIFIC” EXCEPTIONS START W/TAXES

Everything that impacts the specific real estate
MUST be represented here...

- ✓ Taxes
- ✓ Liens/Encumbrances
- ✓ Civil cases (Divorce, Foreclosures, Probate...)
- ✓ Plat info
- ✓ HOA
- ✓ Easements
- ✓ Restrictions
- ✓ Mineral leases... and MORE!

PROFORMA POLICY

- A snapshot of coverage scheduled for the final policy
- Not an insurable product, but is a roadmap to what can be issued upon completing all title due diligence
- Shows Exceptions as “Intentionally Deleted” to preserve Commitment numbering

SCHEDULE B EXCEPTIONS FROM COVERAGE	
This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:	
1.	Intentionally deleted.
2.	All taxes for the year 2020; and subsequent years, not yet due and payable.
3.	Intentionally deleted.
4.	Intentionally deleted.
5.	Intentionally deleted.
6.	Intentionally deleted.
7.	Any prior reservation or conveyance, together with release of damages, pertaining to minerals of every kind and character, including, but not limited to, oil, gas, sand and gravel in, on and under the Land.
8.	Intentionally deleted.
9.	Rights of tenants in possession, as tenants only, under prior unrecorded residential leases.

TAXES

Using Drop & Swap Transactions to explore tax implications on properties

DROP & SWAP OVERVIEW

- **Newly-formed Entity**
 - Seller becomes Sole Member of the Newly-formed Entity
- **The “Drop”**
 - Seller deeds Property into the Newly-formed Entity via an exempt conveyance
- **The “Swap”**
 - Seller transfers 100% of Membership Units in the Newly-formed Entity to the Buyer



WHY DO PARTIES OPT FOR A DROP-AND-SWAP TRANSACTION

Privacy

Exempt Conveyance Fee

**Avoid Potential Automatic
Revaluation for Property Taxes**

BACKGROUND AND LEGAL HISTORY

- **Legality**
- **Not entirely new – just more popular**
- **High tax rates & rising real estate valuations**
- **Board Of Education reverse-engineering value of the property**
- **Recent Case Law & Legislative Initiatives**

BOARD OF REVISION CASES

- **Actions initiated to establish the market value of a property to assess a different annual tax amount**
- **May be initiated by the owner, but more commonly initiated by a local school board of education**
- **Potential Retroactive Revaluation for the most recent tax year**

BOARD OF TAX APPEALS

- **Even if successful on the initial BOR case, the decision may be subject to appeal**
 - **Subpoena Power**
- **Examples:**
 - **County re-assesses a higher market value**
 - **Owner initiates BOR case to establish lower tax amount**
 - **Board of Education initiates BOR case to establish higher amount**
 - **Board of Education may challenge for higher tax valuation upon appeal**
 - **Owner may challenge for lower tax valuation upon appeal**

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION V. CUYAHOGA COUNTY BOARD OF REVISION ¹

- **Facts:**
 - **Mixed use building (parking, retail, vacant office, fitness center)**
 - 2016 Value: \$2,785,200
 - BOE Complaint Value: \$7,300,000
 - Owner Requested Value: \$3,100,000
 - **Board of Education alleged transfer via an “entity sale” (aka a Drop-and-Swap)**
 - **Owner objected to that characterization**
 - Part of an entire business transaction (financials, operating statements, etc.)
 - Requested use of an appraisal report and testimony as to \$3.1M valuation

¹ Case No. 2017-2277 (Ohio Board of Tax Appeals)

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION V. CUYAHOGA COUNTY BOARD OF REVISION (CONT'D)

- **BOR holding:**
 - **Rejected BOE's Argument**
 - “[T]he transaction does not identify the assets involved or the value attributed to the real property or any other assets and the board finds the sale not to be an indication of value for the 2016 tax year.”
- **BOE appealed requesting the increased value**
 - **BOE presented appraisal prepared by CBRE in connection with the transaction, opining the value of the fee simple “as is” was \$8.4M**
 - **Owner countered with testimony of property's poor condition and other considerations for lease of sixth-floor space, arguing for \$3.1M appraisal report**

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION V. CUYAHOGA COUNTY BOARD OF REVISION (CONT'D)

- The cited cases:

- The best evidence of a property's true value in money is a recent, arm's-length sale of the property.²
- When the issue is whether a sale price establishes a property's value, the factors attending that issue must usually be determined de novo by the Board.³
- Burden falls to the BOE to prove a value different than that adopted by the BOR.⁴

² *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d527, 2017-Ohio-4415; *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977).

³ *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

⁴ *Dublin City Schools*, *supra*; *Huber Hts. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 332, 2018-Ohio-4284.

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION V. CUYAHOGA COUNTY BOARD OF REVISION (CONT'D)

- Cited cases (cont'd):

- Ordinarily the transfer of an interest in a corporate entity is considered a sale of personal property and not indicative of real property value.⁵
- But, the sale of all the interests in an ownership entity is indicative of real property value where the ownership entity was formed for the sole purpose of effectuating the transfer of title to the property and the entity holds no other assets.⁶

⁵ *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193 (1998); *Gahanna-Jefferson Public Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 450 (2000).

⁶ *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-127, unreported, *aff'd*, 8th Cuyahoga Dist.No. 107199, 2019-Ohio-634; *Parkland Assoc. LTD v. Cuyahoga Cty. Bd. of Revision* (June 25, 2015), BTA Nos. 2011-3893, 4060, unreported; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* (Mar. 6, 2015), BTA No. 2014-4328, unreported.

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION V. CUYAHOGA COUNTY BOARD OF REVISION (CONT'D)

- **Board of Appeals Holding:**

- **True Value: \$3.1M**
 - BOE failed to meet its burden to prove a value different than that determined by BOR
- **Not solely a sale of property for purposes of real property tax valuation**
 - Purchase & Sale Agreement clearly the sale of membership interest, not only a sale of real property
 - Purchase Agreement indicates property transferred is real property AND non-realty assets, including intangible assets & liabilities (e.g. non-lease contracts)
- **Mistaken assumptions in BOE appraisal give report little utility in establishing the value of the property as it actually existed**

QUESTIONS & ANSWERS

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