

PURCHASE AND SALE OF COMMERCIAL REAL ESTATE

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This portion of the program covers the purchase and sale of commercial real estate, from the perspective of both the buyer's attorney and the seller's attorney. The materials for this presentation are:

- Outline: Negotiating and Drafting Purchase and Sale Agreements for Commercial Real Estate
- Purchase and Sale Agreement (sample)
- Sample Letter of Intent
- Sample Confidentiality Agreement
- Seller's Closing Checklist (sample)
- Buyer's Closing Checklist (sample)
- Seller's letter of escrow instructions (sample)
- Buyer's letter of escrow instructions (sample)

**NEGOTIATING AND DRAFTING PURCHASE AND SALE
AGREEMENTS FOR COMMERCIAL REAL ESTATE**

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, 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, 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. 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 Section III 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, 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.
 - (1) Leases, contracts, warranties, licenses, trade names, etc.
 - (2) 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.
 - (1) Specify portion of purchase price that Seller will finance.
 - (2) 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.
 - (1) Buyer should review loan documents prior to entering contract to confirm that they are acceptable.
 - (2) 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.
 - (3) Is Seller to be released from assumed mortgage loan? If so, make that a condition of contract.
 - (4) 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.
 - (5) 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.
- (6) Specify who pays assumption fee, attorneys' fees and any other charges of lender whose loan is to be assumed.
- (7) 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?
 - a. 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, review of Buyer's credit if Seller providing financing).
2. 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.
 - (1) Buyer obtaining new financing.
 - (2) Approval of loan assumption.
 - b. Buyer determining that condition of property satisfactory.
 - (1) Environmental.
 - (2) 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:
 - (1) Objective standard: marketable title, determined in accordance with OSBA Standards of Title Examination.
 - (2) 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 and 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; 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. 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.
 - j. Operating statements for property.
2. 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. 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. 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.
 - 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.).
 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.
 - 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.
 - (1) Delinquent taxes to be paid by Seller or credited against purchase price.
 - (2) Current taxes to be prorated as of closing date and paid by Seller or credited against purchase price.
 - (3) 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; 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:
 - (1) 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.
 - (2) 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 III.I.6.).
 - b. Include indemnifications by Seller and Buyer described in III.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 III.J.5.).
 - b. Include indemnifications by Seller and Buyer described in III.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, 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 it has 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 III.I.6.
 - m. Representations and warranties regarding contracts - see III.J.5.
 - n. Representations and warranties regarding assumed loan - see III.D.2.c.(4).
3. Seller generally wants to couch representations and warranties as being to best of Seller's 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 best of Seller's 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.
1. Specify responsibilities of Seller in managing the property prior to closing. Seller's obligations might include:
 - a. To maintain property in substantially the same condition as of date of contract.
 - b. To manage property in responsible manner and in a manner consistent with management prior to contract.
 - c. To insure property in commercially reasonable amounts and with commercially reasonable deductible.
 - d. 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.
 - e. Not to enter into any agreement that would encumber the property after closing without Buyer's consent.
 - f. To advise Buyer of any action or claim concerning the property.
 - g. 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 Section 1031 of Internal Revenue Code. It's a good idea to include a provision obligating each party to cooperate with the other in accomplishing a like-kind exchange. See Section 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 within 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 2013, 2014, 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

EXHIBIT C

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: _____

EXHIBIT D

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: _____

EXHIBIT E

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

_____, 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.

_____, 2010

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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 _____

_____, 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.
_____, 2010
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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_____