

P/C 7-20-21 Finance  
CA 8-24-21  
1st R 8-24-21  
2nd R 9-7-21  
3rd R 9-21-21  
D/C

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 11212-2021

INTRODUCED BY: MAYOR GAMMELLA

AN ORDINANCE  
AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT  
FOR THE PURCHASE OF PERMANENT PARCEL NO. 343-15-023,  
AND DECLARING AN EMERGENCY

WHEREAS, the owners of real property located at 16644 Snow Road, Brook Park, Ohio, permanent parcel no. 343-15-023 and the City of Brook Park have negotiated an agreement for purchase of said property;

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

**SECTION 1:** That the Mayor is hereby authorized to enter into a contract for the purchase of permanent parcel no. 343-15-0023 pursuant to the terms and conditions set forth in the agreement attached hereto as Exhibit "A", which is incorporated hereto as if fully rewritten herein.

**SECTION 2:** The Purchase Price for the aforesaid transaction shall be \$1,550,000.00 plus \$210,000.00 tax donation received letter from Brook Park, for a total value of \$1,760,000.00.

**SECTION 3:** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 4:** This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to authorize the Mayor to enter into a purchase agreement for the purchase of permanent parcel no. 343-15-023; therefore provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council it shall take effect

and be in force immediately from and after its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: September 21, 2021 *Michelle Blazak*  
PRESIDENT OF COUNCIL

ATTEST: *Michelle Blazak* APPROVED: *J. J. [Signature]*  
CLERK OF COUNCIL MAYOR

9/21/2021  
DATE

CERTIFICATE

Michelle Blazak, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance/Resolution No. 11212-2021

passed on the 21st day of September 2021 by said council.

*Michelle Blazak*  
Clerk of Council

I, Michelle Blazak, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at five of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing September 23, 2021  
*Michelle Blazak*  
MICHELLE BLAZIK  
Clerk of Council

	Yea	Nay
Troyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Orcutt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schmuck	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input type="checkbox"/>	<input checked="" type="checkbox"/>

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

*[Signature]*  
DIRECTOR OF LAW

## OHIO

## COMMERCIAL REAL ESTATE PURCHASE AGREEMENT

**I. THE PARTIES.** This Commercial Real Estate Purchase Agreement ("Agreement") made on \_\_\_\_\_, 20\_\_\_\_ ("Agreement Date"), between:

**City of Brook Park, ("Buyer")** with a mailing address of 6161 Engle Road, Brook Park, Ohio 44142, who agrees to buy, and

**SMB Hospitality Group, LLC, dba as Super-8 Hotel("Seller")** with a mailing address of 16644 Snow Road, City of Brook Park, Ohio 44142 who agrees to sell and convey real and personal property as described in Sections II & III. Buyer and Seller shall be collectively known as the "Parties."

**II. LEGAL DESCRIPTION.** The real property along with improvements and fixtures thereon and with all appurtenant rights, privileges, and easements is best described as: (check one)

☒ - Hotel

**Street Address: 16644 Snow Road, Brook Park, Ohio 44142**

**Tax Parcel Information: 343-15-023**

**III. PERSONAL PROPERTY.** In addition to the real property described in Section II, the Seller shall include the following personal property: None.

The real property in Section II and any personal property in Section III shall be collectively known as the "Property".

**IV. PURCHASE PRICE.** The Buyer agrees to purchase the Property by payment of **\$1,550,000.00 Dollars and \$210,000.00 tax donation letter** from the City of Brook Park.

☒ - **All Cash Offer.** No loan or financing of any kind is required in order to purchase the Property. Buyer shall provide Seller written third (3<sup>rd</sup>) party documentation verifying sufficient funds to close no later than 30 days after signing of this contract. Seller shall have three (3) calendar days after the receipt of such documentation to notify Buyer, in writing, if the verification of funds is not acceptable. If Buyer fails to provide such documentation, or if Seller finds such verification of funds is not acceptable, Seller may terminate this Agreement. Failure of Seller to provide Buyer written notice of objection to such verification shall be considered acceptance of verification of funds.

**V. EARNEST MONEY DEPOSIT.** After acceptance by all Parties, the Buyer agrees to make a payment in the amount of \$ 10,000.00 as consideration by no later than 30 days after signing of this contract. ("Earnest Money"). The Earnest Money shall be applied to the Purchase Price at Closing and subject to the Buyer's ability to perform under the terms of this Agreement. Any Earnest Money accepted ☒ **is** ☐ **is not** required to be placed in a separate trust or escrow account in accordance with Ohio law. The Earnest Money shall be held by Maximum Title & Escrow Services 400 W. Bagley Road, Berea, Ohio 44017 (440) 801-5000 ("Escrow Agent").

a.) **Return of Deposit.** Unless otherwise specified in this Agreement, in the event any condition of this Agreement is not met and the Buyer has fulfilled any required notice obligation in a timely manner regarding the condition having not been met, the Escrow Money shall be returned in accordance with Ohio law.

**VI. INSPECTION PERIOD.** Buyer shall be under no obligation to purchase the Property or otherwise perform under this Agreement unless Buyer determines the Property to be, in all respects, suitable for its intended purposes. The decision as to whether the Property is suitable for its intended purposes shall be the sole decision of Buyer, determined in the absolute discretion of Buyer, with Buyer's decision being final and binding upon both Parties. Buyer shall have until 90 days after the signing of this contract by both parties, to notify Seller of its termination of this Agreement due to Buyer's determination that the Property is unsuitable for its intended purpose ("Inspection Period"). In the event Buyer elects to terminate this Agreement, Buyer shall provide written notice of termination to Seller prior to the expiration of the Inspection Period. In the event Buyer provides said notice of termination, Seller and any Escrow Agent shall be obligated to return the Escrow Money to the Buyer as provided in Section V hereof, and neither party shall have any further rights or obligations under this Agreement. In the event Buyer does not submit written notice of termination prior to the expiration of the Inspection Period, the Buyer shall be deemed to be satisfied with its inspections of the Property and this contingency shall be deemed to be fulfilled. The Seller, at no expense, shall fully cooperate with Buyer in obtaining any and all approvals required from any Federal, State, or Local Government ("Governmental Approvals") necessary for Buyer to satisfy their needs during the Inspection Period for the suitability of the Property. Said Governmental Approvals shall be obtained during the Inspection Period unless the Parties agree otherwise. Any additional agreements related to this Section must be done in writing and attached to this Agreement.

**VII. SELLER'S DISCLOSURES.** In order to meet the Buyer's obligations during the Inspection Period, the Seller shall be required to provide the following documents and records, to the extent they are within the possession or control of the Seller, at the Seller's sole cost and expense:

- a.) **Title Commitment.** A title commitment ("Title Commitment") from a title company selected by the Seller to the Buyer's approval ("Title Company"), together with a copy of each instrument, agreement or document listed as an exception to title in such Title Commitment;
- b.) **Disclosure Statement.** A disclosure statement of the Property signed and dated by the Seller;



- c.) **Other Agreements.** A true and correct copy of all management agreements and contracts affecting the Property;
- d.) **Studies and Reports.** All copies in the Seller's possession of studies and/or reports which have previously been performed in connection with or for the Property, including without limitation, environmental reports, soils studies, seismic studies, physical inspection reports, site plans and surveys, and identification of such studies of which the Seller is aware but that are not in their possession;
- e.) **Written Notices.** All copies of written notices relating to a violation of a Local, State, or Federal law including, without limitation, environmental laws relating to land use, zoning compliance, or building codes;
- f.) **Water Rights.** Water rights and/or water shares used in connection with the Property;
- g.) **Copies of Leases.** Copies of all current leases together with any ongoing evictions or legal matters related to the Property; and
- h.) **Other Documents.** Any other documents related to the Property that could serve as evidence to adversely affect its value.

Seller shall be required to provide the aforementioned disclosures within 30 calendar days after the Effective Date of this Agreement.

**VIII. TITLE.** Merchantable title shall be conveyed by General Warranty deed, subject to conditions, zoning, restrictions, and easements of record, if any, which do not interfere with or restrict the existing use of the Property.

**Title Agent:** Maximum Title & Escrow Services 400 W. Bagley Road, Berea, Ohio 44017 (440) 801-5000 ("Title Agent").

a.) **Title Insurance.** At the ☐ Seller's expense ☐ Buyer's expense ☒ Shared expense of both Parties, the Seller shall provide the Buyer with a standard owner's policy insuring marketable title in the amount of the Purchase Price. If any matter disclosed by the Title Commitment adversely and materially affects the value of the Premises or Buyer's intended use of the Property, the Buyer shall have the right to terminate this Agreement by giving the Seller written notice within 60 calendar days after copies of the Title Commitment, in accordance with Section VII, are delivered to the Buyer; otherwise, the Buyer's right to terminate this Agreement pursuant to this Section shall be deemed to have been waived. A matter disclosed on the Title Commitment that is in the form of a lien that is liquidated in amount, and that can be readily discharged, shall not be grounds for termination of this Agreement by Buyer under this Section so long as the Seller discharges such lien(s) at Closing.

**IX. SURVEY.** The Parties agree that:

☒ - **New Survey Requested.** Buyer will, at the ☒ Seller's ☐ Buyer's ☐ Shared expense and within a timeframe allowed to deliver and examine title evidence, obtain a certified survey of the Property from a certified and registered surveyor within the State. If the survey reveals encroachments on the Property or that the improvements encroach on the lands of another, such encroachments will constitute a title defect. The Buyer shall have the right to terminate this Agreement with written notice to the Seller within 60 calendar days of being notified of said title defect.

**X. CURE PERIOD.** Prior to any claim for default being made, either the Buyer or Seller will have an opportunity to cure any alleged default. If either Buyer or Seller fails to comply with any provision of this Agreement, the other party will deliver written notice to the non-complying party specifying such non-compliance. The non-complying party shall have 30 calendar days after delivery of such notice to cure the non-compliance.

**XI. CLOSING.** The purchase of the Property shall be closed on the 90<sup>th</sup> day after the signing of this contract by all parties or earlier at the office of a title company to be agreed upon by the Parties ("Closing"). Any extension of the closing must be agreed upon, in writing, by Buyer and Seller. Real estate taxes, rents, dues, fees, and expenses relating to the Property for the year in which the sale is closed shall be paid by the Seller and prorated as of the Closing.

a.) **Closing Costs.** The costs attributed to the Closing of the Property shall be the responsibility of ☐ Buyer ☐ Seller ☒ **Both Parties.** The fees and costs related to the Closing shall include, but not be limited to, a title search (including the abstract and any owner's title policy), preparation of the deed, transfer taxes, recording fees, and any other costs by the title company that is in standard procedure with conducting the sale of a property.

**XII. SALE OF BUYER'S PROPERTY.** Performance under this Agreement: (check one)

☒ - **Shall not** be contingent upon the Buyer selling another property.

**XIII. ASSIGNABILITY.** This Agreement is: (check one)

☒ - **Not Assignable.**

**XIV. NOTICES.** All notices shall be in writing and may be delivered by the following acceptable method(s): (check all that apply)

- ☒ - E-Mail
- ☒ - Certified Mail (with return receipt)
- ☒ - Personal Delivery

Such notices shall be sent to the respective Parties' mailing addresses listed in Section I

**XV. CONVEYANCE.** Upon performance by the Buyer of the closing obligations specified herein, the Seller shall convey marketable title of the Property to the Buyer by the deed mentioned in Section VIII, including, but not limited to, oil, gas, and other mineral rights, subject only to building and use restrictions, easements, and restrictions of record, if any.

**XVI. ENVIRONMENTAL WARRANTY, DISCLOSURES AND INDEMNIFICATION.** To the best of Seller's knowledge, there are no areas of the Property where hazardous substances or hazardous wastes, as such terms are defined by applicable Federal, State, and Local statutes and regulations, have been disposed of, released, or found. No claim has been made against Seller with regard to hazardous substances or wastes as set forth herein, and Seller is not aware that any such claim is current or ever has been threatened. Seller shall inform Buyer, to the best of Seller's knowledge, of any hazardous materials or release of any such materials into the environment, and of the existence of any underground structures or utilities which are or may be present on the Property.

**XVII. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** As an inducement to Buyer to enter into this Agreement and to purchase the Property, Seller warrants, represents, and covenants to Buyer, as follows:

a.) **Authority.** Seller: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws in the State of Ohio or another State; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Buyer in accordance with the terms and provisions of this Agreement.

b.) **Title and Characteristics of Property.** Seller, as of the date of execution of this Agreement, owns the Property in fee simple and has marketable and good title of public record and, in fact, the Property at Closing shall have the title status as described in Section VIII of this Agreement.

c.) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller at the Closing, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller is bound. At Closing, all necessary and appropriate action will have been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed by Seller at Closing, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

d.) **Condemnation.** The Seller has received no notice of, nor is Seller aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof.

e.) **Litigation.** There is no action, suit or proceeding pending or, to Seller's knowledge, threatened by or against or affecting Seller or the Property, which does or will involve or affect the Property or title thereto. Seller will defend, indemnify, and otherwise hold Buyer harmless from any and all claims of any person due to, arising out of or relating to the Property, including any and all costs, expenses, and attorneys' fees which Buyer may incur as a result of Seller's breach of its warranty hereunder. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Buyer written notice thereof.

f.) **Assessments and Taxes.** No assessments have been made against any portion of the Property which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens, and Seller shall notify Buyer of any such assessments which are brought to Seller's attention after the execution of this Agreement. The Seller will pay or cause to be paid promptly all City, State, and County ad valorem taxes and similar taxes and assessments, all sewer and water charges, and all other governmental charges levied or imposed upon or assessed against the Property which are due on or prior to the Closing.

g.) **Boundaries.** (i) There is no dispute involving or concerning the location of the lines and corners of the Property; (ii) to Seller's knowledge there are no encroachments on the Property and no portion of the Property is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and (iii) no portion of the Property is located within a watershed area imposing restrictions upon the use of the Property or any part thereof.



h.) **No Violations.** The Seller has received no notice there are any violations of State or Federal laws, municipal or county ordinances, or other legal regulations or requirements with respect to the Property, including those violations referenced in Paragraph 7 above. The Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are such violations. In the event Seller receives notice of any such violations affecting the Property prior to the Closing, Seller shall promptly notify Buyer thereof, and shall promptly and diligently defend any prosecution thereof and take any and all necessary actions to eliminate said violations.

i.) **Foreign Ownership.** Seller is not a "foreign person" as that term is defined in the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto, and Buyer has no obligation under Section 1445 of the U.S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U.S. Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby (as such term is defined in the regulations issued under said Section 1445).

j.) **Prior Options.** No prior options or rights of first refusal have been granted by Seller to any third parties to purchase or lease any interest in the Property, or any part thereof, which are effective as of the execution date.

k.) **Mechanics and Materialmen.** At Closing, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect, or engineer for work, labor, or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any person could claim a lien against the Property and shall not have done any work on the Property within one-hundred twenty (120) days prior to Closing.

**XVIII. BUYER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** Buyer: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of Ohio or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Seller in accordance with the terms and provisions of this Agreement.

a.) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Buyer at the Closing, and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Buyer is a party, or any judicial order or judgment of any nature by which Buyer is bound. At Closing, all necessary and appropriate action will have been taken by Buyer authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Buyer of the documents and instruments to be executed by Buyer at Closing, and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

**XIX. ESCROW AGENT.** The Parties authorize the Escrow Agent to receive, deposit, and hold funds and other property in escrow, including Earnest Money, that is subject to collection and disburse them in accordance with the terms of this Agreement. The Parties agree that the Escrow Agent will not be liable to any person for misdelivery of Escrow Money to the Buyer and the Seller, unless the misdelivery is due to the Escrow Agent's willful breach of this Agreement or gross negligence. If the Escrow Agent has doubt as to their duties or obligations under this Agreement, Escrow Agent may, at their sole decision:

a.) **Hold the Escrow Money.** Hold any Escrow Money until the Parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator determines the rights of the Parties; or

b.) **Deposit.** Deposit the Escrow Money with the clerk of the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the Parties of such action, Escrow Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If Escrow Agent is a licensed real estate broker, Escrow Agent will comply with Ohio law. In any suit in which Escrow Agent interpleads the escrowed items or is made a party because of acting as Escrow Agent hereunder, Escrow Agent will recover reasonable attorneys' fees and costs incurred, with these amounts to be paid from and out of the Escrow Money and charged and awarded as court costs in favor of the prevailing party.

**XX. SELLER'S DEFAULT.** If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Seller's default or failure to perform hereunder, Buyer may, at Buyer's option and as its sole remedy, elect to either: (i) specifically enforce the terms hereof; or (ii) demand and be entitled to an immediate refund of the Escrow Money, in which case this Agreement shall terminate in full.

**XXI. BUYER'S DEFAULT.** If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Buyer's default hereunder, Seller shall be entitled, as its sole and exclusive remedy hereunder, to receipt of the Escrow Money amount as full and complete liquidated damages for such default of Buyer. The Parties hereby acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Buyer's default of this Agreement or any duty arising in connection or relating herewith. Seller's entitlement to and receipt of the Escrow Money is intended not as a penalty, but as full and complete liquidated damages. The right to retain such sums as full liquidated damages is Seller's sole and exclusive remedy in the event of default or failure to perform hereunder by Buyer, and Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Buyer for any claims, injury, or loss arising from or in connection with this Agreement, including without limitation: (i) for specific performance of this Agreement; or (ii) to recover any damages in excess of such liquidated damages.

**XXII. ATTORNEYS' FEES.** In any claim or controversy arising out of or relating to this Agreement, the prevailing party, which for purposes of this provision shall include the Buyer, Seller, and any real estate agent, will be awarded reasonable attorneys' fees, costs, and expenses.

**XXIII. DAMAGE TO THE PROPERTY.** If the property is damaged, by fire or other casualty, after the Effective Date and before the Closing, the Seller will bear the risk of loss and the Buyer may cancel this Agreement without liability and the Escrow Money shall be returned to the Buyer. Alternatively, the Buyer will have the option of purchasing the Property at the agreed-upon Purchase Price and the Seller will credit the deductible, if any, and transfer to the Buyer at Closing any insurance proceeds or Seller's claim to any insurance proceeds payable for the damage. The Seller will cooperate with and assist the Buyer in collecting any such proceeds. The Seller shall not settle any insurance claim for damage caused by casualty without the consent of the Buyer.

Furthermore, if any part of the Property, after the Effective Date and before the Closing, is taken in condemnation or under the right of eminent domain, or proceedings for such taking are pending or threatened, the Buyer may cancel this Agreement without liability and the Escrow Money will be returned to the Buyer. Alternatively, the Buyer will have the option of purchasing what is left of the Property at the agreed-upon Purchase Price and the Seller will transfer to the Buyer at Closing the proceeds of any award or the Seller's claim to any award payable for the taking. The Seller will cooperate with and assist the Buyer in collecting such an award.

**XXIV. OPERATION OF PROPERTY DURING AGREEMENT PERIOD.** The Seller will continue to operate the Property and any business conducted on the Property in the manner operated prior to the Agreement and will take no action that would adversely impact the property, tenants, lender, or business, if any. Any changes, such as renting vacant space, that materially affects the Property or the Buyer's intended use will be permitted only with the Buyer's consent.

**XXV. CLOSING PROCEDURE.** Unless otherwise agreed or stated herein, the Closing shall be in accordance with the laws located in the State of Ohio.

a.) **Possession and Occupancy.** The Seller will deliver possession and occupancy of the Property to the Buyer at Closing. The Seller shall provide access to all locks, including keys, remote controls, and any security/access codes, necessary to operate all locks, mailboxes, and security systems.

b.) **Costs.** The Buyer will pay the Buyer's attorneys' fees, taxes, and recording fees on notes, mortgages, and financing statements and recording fees for the deed. The Seller will pay the Seller's attorneys' fees, taxes on the deed, and recording fees for documents needed to cure title defects.

c.) **Documents.** The Seller will provide: the deed, the bill of sale, mechanic's lien affidavit, originals of those assignable service and maintenance contracts that will be assumed by the Buyer after the Closing, letters to each service contractor from the Seller advising each of them of the sale of the Property, and if applicable, the transfer of its contract, and any assignable warranties or guarantees received or held by the Seller from any manufacturer, contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium documents, if applicable; assignments of leases and updated rent roll; tenant and lender estoppel letters; tenant subordination, non-disturbance and attornment agreements (SNDA's) required by the Buyer or the Buyer's lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the change in ownership/rental agent. If any tenant refuses to execute an estoppel letter, the Seller will certify to the buyer that the lease is correct. If the Seller is an entity, the Seller will deliver a resolution of its Board of Directors authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the requirements of local law. The Seller will transfer security deposits to the Buyer. The Buyer will provide the closing statement, mortgages and notes, security agreements, and financing statements.

d.) **Taxes and Proration's.** The real estate taxes, personal property taxes on any tangible personal property, bond payments assumed by the Buyer, interest, rents (based on actual collected rents), association dues, insurance premiums acceptable to Buyer, and operating expenses will be prorated through the day before Closing. If the amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at the request of either party, be readjusted upon receipt of the current year's tax bill; this provision will survive the Closing.

e.) **Special Assessment Liens.** Certified, confirmed, and ratified special assessment liens as of the Closing will be paid by the Seller. If a certified, confirmed, and ratified special assessment is payable in installments, the Seller will pay all installments due and payable on or before the Closing, with any installment for any period extending beyond the Closing prorated, and the Buyer will assume all installments that become due and payable after the Closing. The Buyer shall be responsible for all assessments of any kind which become due and owing after the Closing, unless an improvement is substantially completed as of the Closing. If an improvement is substantially completed as of the Closing but has not resulted in a lien before Closing, the Seller will pay an amount of the last estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and does not apply to condominium association special assessments.

**XXVI. RECORDING.** Buyer and Seller agree that before the recording of the deed can take place, funds provided shall be in one (1) of the following forms: cash, interbank electronic transfer, money order, certified check or cashier's check drawn on a financial institution located in the State of Ohio, or any above combination that permits the Seller to convert the deposit to cash no later than the next business day.

**XXVII. ACCEPTANCE.** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Therefore, by the Seller's authorization below, he/she/they accept the above offer and agrees to sell the Property on the above terms and conditions.

**XXVIII. BINDING EFFECT.** This Agreement shall be for the benefit of, and be binding upon, the Parties, their heirs, successors, legal representatives, and assigns, which, therefore, constitutes the entire agreement between the Parties. No modification of this Agreement shall be binding unless signed by both Buyer and Seller.

**XXIX. SEVERABILITY.** In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

**XXX. DISPUTE RESOLUTION.** Buyer and Seller agree to mediate any dispute or claim arising out of this Agreement, or in any resulting transaction, before resorting to arbitration or court action.

- a.) **Mediation.** If a dispute arises between or among the Parties, and it is not resolved prior to or after recording, the Parties shall first proceed in good faith to submit the matter to mediation. Costs related to mediation shall be mutually shared between or among the Parties. Unless otherwise agreed in mediation, the Parties retain their rights to proceed to arbitration or litigation.
- b.) **Arbitration.** The Parties agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator is required to be a retired judge or justice, or an attorney with at least five (5) years of residential real estate law experience, unless the Parties

mutually agree to a different arbitrator. Under arbitration, the Parties shall have the right to discovery in accordance with Ohio law. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this Agreement to arbitrate shall be governed by the Federal Arbitration Act.

- c.) **Exclusions.** The following matters shall be excluded from the mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed, mortgage or installment land sale contract as defined in accordance with Ohio law; (ii) an unlawful detainer action, forcible entry detainer, eviction action, or equivalent; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of probate, small claims, or bankruptcy court. The filing of court action to enable the recording of a notice of pending action, for an order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions of this Section.

**XXXII. TERMS AND CONDITIONS OF OFFER.** This is an offer to purchase the Property in accordance with the above-stated terms and conditions of this Agreement. If at least one, but not all, of the Parties initial such pages, a counteroffer is required until an agreement is reached. The Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of acceptance. If this offer is accepted and the Buyer subsequently defaults, the Buyer may be responsible for payment of licensed real estate agent(s) compensation. This Agreement and any supplement, addendum, or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

**XXXIII. GOVERNING LAW.** This Agreement shall be interpreted in accordance with the laws in the State of Ohio ("Governing Law").

**XXXIV. OFFER EXPIRATION.** This offer to purchase the Property as outlined in this Agreement shall be deemed revoked, and the Earnest Money shall be returned, unless this Agreement is signed by Seller and a copy of this Agreement is personally given to the Buyer during and including the 10 days following signed contract agreement submitted to Sellers representative.

a.) **Effective Date.** The "Effective Date" of this Agreement is the date on which the last one of the Parties has signed or initialed and delivered this offer or the final counteroffer. Calendar days will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. local time of the next business day. Time is of the essence in this Agreement.

**XXXV. ADDITIONAL TERMS & CONDITIONS:** Buyer reserves the right to conduct all necessary property evaluations and environmental surveys regarding the legal evaluation of property prior to transfer.

**XXXVI. ENTIRE AGREEMENT.** This Agreement, together with any attached addendums or disclosures, shall supersede any and all other prior understandings and agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and shall constitute the sole and only agreements between the Parties with respect to the said Property. All prior negotiations and agreements between the Parties with respect to the Property hereof are merged into this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or by anyone acting on behalf of any party which are not embodied in this Agreement, and that any agreement, statement, or promise that is not contained in this Agreement shall not be valid or binding or of any force or effect.

IN WITNESS WHEREOF, the Parties have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

**Seller's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Title of Seller:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Buyer's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Title of Seller:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

DIRECTOR OF LAW



**Buyer's Initials** \_\_\_\_\_ **Seller's Initials** \_\_\_\_\_