

AGREEMENT TO PURCHASE UNIMPROVED REAL ESTATE

TO: \_\_\_\_\_ ("Seller"). Dated: \_\_\_\_\_, 20\_\_\_\_.
The undersigned ("Buyer") offer(s) to purchase for \$\_\_\_\_\_ (the "Purchase Price") in accordance with Section 1.0 \_\_\_\_\_, real estate, the address of which is \_\_\_\_\_, \_\_\_\_\_ County, Indiana, and the legal description of which is \_\_\_\_\_

Such real estate is called the "Real Estate." This offer is made subject to the following provisions:

Section 1. MANNER OF PAYMENT OF PURCHASE PRICE. [Mark appropriate box]

\_\_\_\_\_ 1.01 Cash. The Purchase Price shall be paid in cash.

\_\_\_\_\_ 1.02 Cash with New Mortgage. The Purchase Price shall be paid by Buyer's cash and funds from a new (Conventional) (FHA) (VA) [Strike two] first mortgage loan ("Loan") to be obtained by Buyer. The following provisions shall apply:

(a) Within \_\_\_\_\_ days after this Agreement becomes effective, Buyer shall apply for the Loan, and then proceed promptly and in good faith to meet the lender's requirements for a commitment or other indication that the lender will make the Loan to Buyer ("Commitment").

(b) Buyer shall have \_\_\_\_\_ days after this Agreement becomes effective within which to obtain a Commitment for a Loan having terms at least as favorable to Buyer as the following:

- (1) principal amount of \$\_\_\_\_\_ ;
(2) (fixed) (adjustable) [Strike one] interest rate;
(3) amortization over \_\_\_\_\_ years; and
(4) discount points ("Points") charged by a lender in connection with the Loan which total not more than \_\_\_\_\_ % of the Loan.

(c) Of the Points, Seller shall pay \_\_\_\_\_ Points or \$\_\_\_\_\_, whichever is less. Buyer shall pay the remaining Points, except those which Seller is required to pay by law.

(d) If Buyer satisfies the requirements stated in Subsection 1.02(a), but is unable to obtain within the number of days stated in Subsection 1.02(b), a Commitment having terms at least as favorable to Buyer as there stated, either party may terminate this Agreement.

(e) If Buyer fails to satisfy the requirements stated in Subsection 1.02(a), then Seller may seek the remedies available under Subsections 16 and 21.

(f) See Subsection 17.01 for additional provisions which apply here.

\_\_\_\_\_ 1.03 Cash with Assumption of Existing Mortgage. The Purchase Price shall be paid by Buyer in cash less the unpaid principal balance of an existing mortgage loan on the Real Estate. Buyer shall assume and agree to pay such mortgage loan and perform its terms. The following provisions shall apply:

(a) Buyer has been informed that the holder of such mortgage loan is \_\_\_\_\_, and that the unpaid principal balance is approximately \$\_\_\_\_\_ as of the date of this offer.

(b) Seller (may) (may not) [Strike one] require that the lender release Seller from liability for the existing mortgage loan. Of any fee charged by the lender for releasing Seller, (Seller) (Buyer) [Strike one] shall pay no more than \$\_\_\_\_\_ ; and the other party shall pay any balance of such fee.

(c) If the lender charges any other fee(s) for assumption of the mortgage loan, Buyer shall pay such fee(s).

(d) See Section 15.02 for additional provisions which apply here.

\_\_\_\_\_ 1.04 Contract for Conditional Sale/Purchase Money Mortgage. [Mark (a) or (b)]

\_\_\_\_\_ (a) Contract for Conditional Sale. The parties shall execute and deliver to each other, a Contract for Conditional Sale of Real Estate ("Contract") in the form approved, as of the date this Agreement, by The Allen County Indiana Bar Association, Inc. The Contract shall contain the provisions described in Subsection 1.04(c), and shall also provide that the Real Estate may not be leased or occupied by persons other than Buyer. The Contract shall also provide for Seller's delivery to Buyer of a Deed, (as defined in Subsection 20.01(b)) within 180 days from the effective date of this Agreement

\_\_\_\_\_ (b) Purchase Money Mortgage. Buyer shall execute and deliver to Seller a promissory note ("Note") and a purchase money mortgage ("Mortgage") in the forms approved, as of the date this Agreement becomes effective, by The Allen County Indiana Bar Association, Inc. The Note and the Mortgage shall contain the provisions described in Subsection 1.04(c).

(c) The Contract, or the Note and the Mortgage, shall provide for the following:

- (1) a cash down payment of \$\_\_\_\_\_ .
(2) Payment of the unpaid balance of the Purchase Price by monthly installments of principal and interest of not less than \$\_\_\_\_\_ , including an annual interest rate of \_\_\_\_\_ %, calculated monthly.

\_\_\_\_\_ (3) A "balloon payment," by specifying the time the Purchase Price is to be paid in full, which is \_\_\_\_\_ .

[Check if this provision applies.]

\_\_\_\_\_ (4) An appropriate escrow for Buyer's payment of taxes and insurance. [Check if this provision applies.]

Section 2. TAXES, ASSESSMENTS AND ASSOCIATION DUES.

2.01 [Check (a) or (b)]

\_\_\_\_\_ (a) Buyer shall assume and pay real estate taxes payable in (May) (November) [Strike one], \_\_\_\_\_, (year) and all subsequent taxes. At or before closing, Seller shall pay all real estate taxes payable before that date.

\_\_\_\_\_ (b) The real estate taxes shall be prorated. Seller shall pay real estate taxes which are payable during the year in which closing occurs, and taxes payable during the succeeding year, prorated to the date of closing. Buyer shall assume and pay all subsequent taxes.

2.02 Seller shall pay any assessments or charges upon or applying to the Real Estate for public improvements or services which, on the date of closing, have been or are being constructed or installed on or about the Real Estate, or are serving the Real Estate. If any such improvement has been or is being constructed, but an assessment for it has not yet been made, Seller shall pay an amount reasonably estimated by the applicable governmental agency to be equal to the anticipated assessment. SELLER WARRANTS that Seller has not received notice of any planned improvement for which an assessment reasonably might be made, within one (1) year after this Agreement, other than as is disclosed by Seller to Buyer in this Agreement.

2.03 If the Real Estate is located in a subdivision that requires membership in a community association ("Association"), then this Subsection 2.03 applies. Membership in the Association will vest in Buyer when the Deed to Real Estate is delivered to Buyer. Such membership may require (among other things) payment to the Association of annual or special dues, maintenance fees and assessments ("Association Dues") which would be a lien against the Real Estate, if unpaid. Buyer has been informed that the annual Association Dues applicable to the Real Estate currently are \$ \_\_\_\_\_. If Association Dues payable prior to closing are \$100 or less annually, Seller shall pay them. If such Association Dues are more than \$100 annually, the parties shall pay them pro rata, according to the date of closing. Buyer shall assume and pay all subsequent Association Dues.

2.04 Payment by Seller of Seller's obligations under Section 2 shall either be made or provided for at closing. However, if the Real Estate is a subdivision lot for which such obligations have not been then separately assessed or determined, Seller shall pay such obligation as soon as reasonably practicable.

**Section 3. FLOOD DESIGNATION OR AREA.** [Mark 3.01 or 3.02]

3.01 Buyer requires that the Real Estate not be located in an area which requires flood insurance, or which is subject to building or use limitations by reason of such location. If the Real Estate is so located, Buyer may terminate this Agreement.

3.02 Buyer may not terminate this Agreement if the Real Estate is located in an area requiring flood insurance or subject to building or use limitations by reason of such location. Buyer agrees to pay all premiums charged for flood insurance from and after the date of closing.

**Section 4. EVIDENCE OF TITLE.**

4.01 Seller shall provide and pay for an ALTA Owner's Policy, insuring in Buyer marketable title to the Real Estate as of a date after the date this Agreement becomes effective, in the full amount of the Purchase Price.

4.02 See Subsection 18 for additional provisions which apply.

**Section 5. SURVEY.**

5.01 Seller shall provide and pay for a survey ("Survey") prepared by a licensed Indiana surveyor selected by the Seller. The Survey shall:

- (a) comply with the competent practice provisions of 865 IAC 1-12 for a retracement or record document survey;
- (b) for an original Survey, include the setting and marking of corner markers or monuments;
- (c) be sufficient to satisfy the requirements of a title insurance company so as to provide affirmative coverage of the Real Estate as to matters of survey;
- (d) be dated within ninety (90) days prior to closing;
- (e) show the flood zone designation of the Real Estate, or whether or not the Real Estate is located in a flood hazard area.

5.02 Any survey of the Real Estate desired by Buyer will be at Buyer's expense.

**Section 6. ZONING.**

6.01 Buyer's intended use of the Real Estate is \_\_\_\_\_.

6.02 If at the time of closing such intended use is not permitted by the applicable zoning ordinance, Buyer may terminate this Agreement.

**Section 7. POSSESSION.**

7.01 Seller shall deliver possession of the Real Estate as marked below [If there is no mark "at closing" shall apply] [Mark one]:

- \_\_\_\_\_ (a) at closing;
- \_\_\_\_\_ (b) within \_\_\_\_\_ days after closing;
- \_\_\_\_\_ (c) by \_\_\_\_\_, 20\_\_\_\_, provided closing occurs by such date; and if it does not, at closing.

**Section 8. REAL ESTATE IMPROVEMENTS AND INSTALLATIONS.** [Check boxes that apply]

8.01 Seller makes the representations here marked as being applicable:

- \_\_\_\_\_ (a) The Real Estate is a lot in a subdivision that meets all local codes and standards.
- \_\_\_\_\_ (b) The Real Estate is restricted to single-family homesteads by zoning and recorded restrictive covenants.
- \_\_\_\_\_ (c) The Real Estate is located on a paved street which has been either built to local government standards, or fully bonded for completion in accordance with such standards.
- \_\_\_\_\_ (d) By the time closing is held, lines to bring to the Real Estate water service, sewer service, and electrical service will have been installed.
- \_\_\_\_\_ (e) The Real Estate is approved for installation of a private sewer system.
- \_\_\_\_\_ (f) The Real Estate has an adequate potable water suppl which is available year around.

8.02 The Parties agree to the provisions here marked:

\_\_\_\_\_ (a) Seller shall construct recreational amenities and common areas in accordance with plans and specifications for them on file with the applicable plan commission and relating to the subdivision in which the Real Estate is located. Seller shall fully bond the construction for completion. After their completion Seller shall either maintain them or convey them, for maintenance, to a community association to be formed by Seller for the benefit of owners of all lots in the subdivision.

\_\_\_\_\_ (b) The Purchase Price specifically excludes sidewalks, sewer taps, water taps, and all connection fees and system charges for any utility services; Buyer is to determine if a public sidewalk is required by the applicable governmental authorities and to install it, if required, at Buyer's cost.

8.03 Other than representations contained in this Section 8 and marked to be applicable, Seller has made no representations regarding the provision or completion by Seller of roads, of utility services for water, gas or electricity, or of recreational amenities and common areas, and Buyer has not relied upon any such other representations, except as Buyer describes in Section 14.

**Section 9. PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS AND EASEMENTS.**

9.01 If the Real Estate is subject to and affected by certain recorded protective restrictions, covenants limitations and easements ("Covenants"), Seller shall furnish Buyer with a copy of the Covenants by the time evidence of title is provided under Sections 4 and 18.

**Section 10. CONDITION OF REAL ESTATE.**

10.01 **Election by Buyer.** This Agreement contains IMPORTANT PROVISIONS set forth in Subsection 19. By initialing below, Buyer selects which of Subsection 19.01 is to apply. [Select ONLY ONE of the following: each person who is a Buyer must initial].

\_\_\_\_\_ (a) Buyer's right to inspection under Subsection 19.01. \_\_\_\_\_ [Initials of Buyer]

\_\_\_\_\_ (b) WAIVER of defects and RELEASE of Seller - "AS IS" transaction under Subsection 19.02. \_\_\_\_\_ [Initials of Buyer]

10.02 **Maintenance.** See Subsection 19.03 for provisions which apply here.

10.03 **Survival.** The provisions of Subsection 19.04 agreed to by the parties shall survive closing.

**Section 11. AGREEMENT.**

11.01 **Offer-Acceptance.** By executing and delivering this Agreement, Buyer is making an offer to Seller. Buyer's offer expires at 1:59 P.M. (local time). \_\_\_\_\_, unless Seller timely accepts it. A party accepting an offer or a counteroffer shall do so in writing delivered to the other party or the party's attorney or agent at or before the time the offer or the counteroffer expires. A party may communicate such acceptance or counteroffer by delivering a photocopy or electronically transmitted copy of the writing to the other party's attorney or agent.

11.02 **Copies of Documents.** A party making or accepting an offer or a counteroffer may do so by delivering a document signed by the party, or by delivering a carbon copy, a photocopy, or a facsimile copy of the signed document. If a copy is delivered, it must consist of the entire document. The person delivering a copy of a document (whether a party or a party's attorney or agent) warrants and represents to the other party that, to the best of the person's knowledge and belief, the document (a copy of which is being delivered) contains the signature of the party whose document is delivered.

11.03 **Effectiveness of Agreement.** Upon timely and proper acceptance of an offer or a counteroffer, an agreement between the parties will become effective, and the parties will then be bound. This Agreement shall continue in effect notwithstanding non-payment by Buyer of additional earnest money due under Subsection 12.01 (if applicable).

11.04 **Acknowledgment of Receipt.** By signing this Agreement, the parties acknowledge receipt of a copy of it.

**Section 12. EARNEST MONEY.**

12.01 At the time Buyer's offer is made and as part of it, Buyer has deposited with \_\_\_\_\_ the sum of \$ \_\_\_\_\_ as earnest money. Within \_\_\_\_\_ days after this Agreement becomes effective, Buyer shall deposit the sum of \$ \_\_\_\_\_ as additional earnest money. If Buyer fails to do so, Seller may seek the remedies available under Subsections 16 and 21.

12.02 All earnest money deposited by Buyer under this Agreement shall be deposited with \_\_\_\_\_ ("Holder"). By accepting earnest money, Holder agrees to be subject to and bound by the provisions of this Agreement regarding disposition of earnest money and remedies for a breach under it. Earnest money so deposited shall be held in escrow subject to this Agreement. If Holder pays earnest money as provided in this Agreement, there shall be no liability for having so held or paid it, and the PARTIES RELEASE Holder from any such liability. At closing, Buyer shall receive credit toward the Purchase Price for earnest money deposited. If this Agreement does not become effective, Holder shall return the earnest money to the Buyer.

12.03 **Disposition of Earnest Money.** After this Agreement becomes effective, and is subsequently terminated, and the earnest money should be disbursed, Holder shall send an authorization and release form ("Authorization") simultaneously to the parties designating the party to whom Holder intends to disburse the earnest money. Transmittal of the Authorization shall be pursuant to the provisions of Subsection 22.02. When Holder receives an executed Authorization from each party, Holder shall disburse the earnest money as provided in this Section. If Holder fails to receive such an Authorization from each party within 7 days after Holder sends it, Holder shall have the option to:

- (a) Retain possession of the earnest money until Holder receives a written agreement signed by both parties, or receives an order of an arbitrator or an order of a court of competent jurisdiction directing disposition of the earnest money; or
- (b) As may be appropriate, either request arbitration between the parties, or commence suit requesting a court of competent jurisdiction to determine the party lawfully entitled to the earnest money, and to order deposit of the earnest money with the clerk, and excuse the Holder from further responsibility for the earnest money.

12.04 Provided Holder complies with the terms of this Agreement, Holder's reasonable costs and expenses (including without limitation, court costs and attorney fees) shall be recoverable from the party who does not prevail in a contest for the earnest money. In the event of a settlement by the parties after the expiration of the 7-day period, then both parties shall be equally liable for Holder's costs and expenses.

12.05 If a period of 90 days elapses from the date Holder sends an Authorization under Subsection 12.03, and Holder neither receives an executed Authorization from both parties, nor receives notice of the commencement of arbitration or suit to resolve any dispute regarding disposition of the earnest money, and shall give 30 days notice of such plan to the parties involved in the sale.

**Section 13. CLOSING.**

13.01 The closing shall be held on or before \_\_\_\_\_, 20\_\_\_\_\_. Subject to the provisions in Subsection 20.01. In no event shall closing occur, or the Deed be delivered, more than 180 days from the date this Agreement becomes effective.

13.02 See Section 20 for additional provisions which apply here.

**Section 14. OTHER PROVISIONS** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 15. ATTORNEY RELATIONSHIP AND DISCLOSURE FORM.**

15.01 **Confirmation of Attorney Relationship.** This Agreement has been prepared by \_\_\_\_\_, an attorney representing **Buyer / Seller** [~~Strike one~~]. **Any non-represented party is strongly advised to have this Agreement reviewed by their own attorney.**

15.02 **Seller's Residential Real Estate Disclosure Form.** [Mark one]

- \_\_\_\_\_(a) Buyer acknowledges receipt and execution of a Seller's Residential Real Estate Disclosure Form required under IC 32-21-5, as amended.
- \_\_\_\_\_(b) Buyer has not received an executed Seller's Residential Real Estate Disclosure Form required under IC 32-21-5, as amended.

**Section 16. REMEDIES OF PARTIES.**

16.01 If this Agreement becomes effective and Buyer, having no right or option to terminate this Agreement, fails to complete the purchase as provided in this Agreement, **Buyer shall pay to Seller, as liquidated damages and not as a penalty, an amount equal to the greater of five percent (5%) of the Purchase Price, or the earnest money deposited by Buyer** ("Damages"). Other than the remedies available under Subsections 21.01 and 21.02, Seller shall then have no other remedy against Buyer at law or in equity. Earnest money deposited shall be credited against the Damages.

16.02 **MANDATORY ARBITRATION.** All claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof concerning amounts in controversy that do not exceed in the aggregate \$3,500 shall be submitted to binding arbitration as provided in Section 21. **By signing this Agreement, the parties agree to binding arbitration in accordance with the provisions of Sections 16 and 21.**

16.03 See Section 21 for additional provisions which apply.

**Section 17. ADDITIONAL PROVISIONS REGARDING PAYMENT OF PURCHASE PRICE.**

**17.01 Payment of Purchase Price By Cash With New Mortgage.**

(a) If Buyer obtains a Commitment for a federally insured or guaranteed mortgage loan (for example: FHA or VA), and if the Purchase Price exceeds the amount of the Loan appraisal, Buyer may terminate this Agreement.

(b) Upon written request from Seller or Seller's Attorney, Buyer shall inform the inquiring person of the progress of the Loan application. In addition, such person shall have the right to inquire of the lender concerning such progress, and Buyer authorizes the lender to disclose such progress and the terms being considered by the lender for a Loan. Further, Seller or Seller's Attorney may assist a lender in processing an application, but such action shall not prejudice or adversely affect the Loan application.

(c) Upon written request from Seller or Seller's Attorney, Buyer shall give such person a copy or summary of the terms of Buyer's Loan application and a copy of the Commitment.

(d) Buyer shall pay all Loan origination, inspection and underwriting fees, and all other closing expenses and costs imposed by the lender in giving Buyer Loan proceeds to purchase the Real Estate, except those which Seller is required to pay by law, and except the Points and closing fee Seller has agreed to pay under Subsection 20.08.

(e) If Buyer having financing available upon terms at least as favorable as those stated in Subsection 1.02(b), fails to purchase the Real Estate, and Seller has not breached this Agreement, Seller may seek the remedies available under Sections 16 and 21.

**17.02 Payment of Purchase Price By Cash With Assumption of Existing Mortgage.**

(a) Immediately after this Agreement becomes effective, Buyer shall apply to the lender for assumption of the existing mortgage loan, and proceed promptly and in good faith to meet the lender's requirements for assumption, subject to Subsection 17.02(b).

(b) Buyer understands that assumption of the existing mortgage loan may be subject to consent of the lender. As a condition to giving consent, the lender may require an interest rate higher than the existing rate, or other concession. Buyer shall have 15 days from the date this Agreement becomes effective to obtain from the lender assumption terms satisfactory to Buyer, and to give Seller notice that such terms have been obtained. If Buyer fails to timely do so, either party may terminate this Agreement.

(c) If the existing mortgage loan neither allows the lender to vary its terms or requires the lender's consent for assumption, Buyer's rights to obtain satisfactory assumption terms and to terminate this Agreement under Subsection 17.02(b) shall not apply.

(d) At closing, Seller shall assign to Buyer amounts held by the lender in escrow; and Buyer shall pay Seller a sum equal to such amount, subject to any necessary adjustments for accrued expenses.

**Section 18. ADDITIONAL PROVISIONS REGARDING EVIDENCE OF TITLE.**

18.01 Buyer shall have a reasonable time before closing to have the evidence of title examined. Seller shall have a reasonable time to correct any title defect.

18.02 Title to the Real Estate shall not be considered unmarketable by reason of any of the following matters, and Buyer shall accept title subject to them:

(a) recorded building restrictions, restrictive covenants, conditions and other use restrictions ("Restrictions") applicable to the Real Estate; and

(b) recorded or visible easements for public roads, utilities, or public purposes ("Easements") upon which existing improvements on the Real Estate do not encroach; PROVIDED, however, that at the time of closing:

(1) there is no existing violation of the Restrictions;

(2) there is no provision of reversion, re-entry, or forfeiture of title by reason of violation of the Restrictions; and

(3) the Restrictions and Easements will not materially interfere with Buyer's intended use of the Real Estate as stated in Subsection 6.01, or as otherwise provided in this Agreement.

18.03 Notwithstanding Seller's obligation under Subsection 4.01, if there is a simultaneous issuance of an ALTA Owner's Policy and an ALTA Loan Policy, all charges and premiums for them shall be paid equally by the parties. If only an ALTA Loan Policy is issued, all charges and the premium for such policy shall be paid by Buyer.

18.04 Seller shall deliver to Buyer, without charge, any Abstract of Title in Seller's possession for the Real Estate.

**Section 19. ADDITIONAL PROVISIONS REGARDING CONDITION OF REAL ESTATE.**

**19.01 Buyer's Right to Inspection.**

(a) Buyer may have the Real Estate inspected, and Seller agrees to make the Real Estate available for that purpose. All inspections and written reports of them (except those required by a lender in connection with a mortgage loan) shall be made and delivered within 30 days after 30 days after the date this Agreement becomes effective.

(b) Inspections shall be at Buyer's expense by qualified, independent inspectors selected by Buyer. An inspector is considered "independent" if the inspector is unrelated to the parties, and will not realize direct or indirect financial benefit (other than receipt of a fee for services rendered) as a result of performing an inspection. The inspections may include, but are not limited to, the following: soil conditions, site suitability, availability of utility services, including private sewer and well, if applicable, and a hazardous waste audit. **INSPECTIONS REQUIRED BY A LENDER DO NOT FULFILL BUYER'S RIGHT OF INSPECTION UNDER SUBSECTION 19.01.**

(c) If an inspection report reveals a major defect ("Defect") in any of the systems and items referred to in Subsection 19.01(b) that could reasonably interfere with Buyer's intended use of the Real Estate, Buyer shall give Seller a copy of such report within 5 days after receiving it. At the same time (and within such 5 days), Buyer shall identify, either on the copy or in a separate document delivered to Seller, each Defect (which must be a major one) Buyer wants cured. Within 10 days after Seller receives such copy or document, Seller may give notice to Buyer which of such defects (all, some or none-to be stated in the notice) Seller is willing to cure. Each Defect Seller undertakes to cure shall be cured to Buyer's reasonable satisfaction, and before closing or at a time otherwise agreed to by the parties. If Seller responds that Seller will cure only some or none of the Defects set out in Buyer's notice, Buyer shall have 5 days from receipt of Seller's notice to accept or reject Seller's response.

(d) Subject to Subsection 19.01(f), either party may terminate this Agreement if:

(1) Seller states in the notice given to Buyer that Seller will not cure all of the Defects (which must be major) Buyer wants cured; or

(2) Buyer rejects Seller's response; or

(3) either party fails to timely give such notice, as provided in Subsection 19.01(c).

(e) Buyer may WAIVE Seller's inability or unwillingness to cure any Defect Buyer wants cured, by giving Seller notice to that effect within 15 days after Seller has given notice of termination. If Buyer so waives, the parties shall proceed to closing without any obligation on Seller to cure the Defect(s)

(f) Neither of the parties shall have the right to terminate this Agreement if the Major Defect is one which Buyer has acknowledged and agreed to accept in this Agreement.

(g) WAIVER: If Buyer fails to timely obtain the inspection and the report described in Subsection 19.01(a), or fails either to timely give Seller a complete copy of the inspection report or to timely identify each Major Defect Buyer wants cured, Buyer shall be deemed to have WAIVED Buyer's right to have an inspection (together with a report on it), or to have Seller cure any Major Defect disclosed by the inspection. In such event, neither Seller

nor Buyer may terminate this Agreement under Subsection 19.01.

**19.02 WAIVER of Defects and RELEASE of Seller -- "AS IS" Transaction.**

(a) Buyer acknowledges that Buyer has had the opportunity to require, as a condition of this Agreement, that the inspections described in Subsection 19.01(b) be made, and that Subsection 19.02 apply. BUYER WAIVES THE RIGHT TO HAVE SUCH INSPECTIONS AND TO HAVE Subsection 19.01 APPLY, and instead relies upon Buyer's own examination. BUYER FURTHER RELEASES SELLER FROM ANY AND ALL LIABILITY RELATING TO ANY DEFECT OR DEFICIENCY AFFECTING THE REAL ESTATE, and agrees to purchase the Real Estate "AS IS."

(b) Inspections required by a lender in connection with a mortgage loan are not included in this waiver.

**19.03 Maintenance.**

(a) Until Seller delivers possession of the Real Estate to Buyer, Seller shall maintain it in the same condition as existed:

(1) [if Subsection 19.01 applies] at the later of the time: (A) of Buyer's last inspection made under Subsection 19.01(a); or (b) when all defects revealed by inspection reports properly obtained by Buyer are cured by Seller if required by this Agreement.

(2) [if Subsection 19.02 applies] at the time of Buyer's last examination before this Agreement became effective.

(b) Prior to closing, Buyer may inspect the Real Estate to determine whether Seller has complied with Subsection 19.03(a).

(c) The failure of Seller to so maintain the Real Estate shall be considered a breach of this Agreement. However, Buyer shall have no claim against Seller for a failure to properly maintain the Real Estate if the reasonable cost of repairing or restoring it to the condition applicable under Subsection 19.01(a) is less than \$100, payment of which cost is Buyer's obligation. If such cost is \$100 or more, Seller shall pay the excess cost over Buyer's obligation.

**19.04 Survival.** The provisions of Section 19 agreed to by the parties shall survive closing.

**Section 20. ADDITIONAL PROVISIONS REGARDING CLOSING.**

**20.01** Closing shall be held on the later of:

(a) the date stated in Subsection 13.01; or

(b) the date all conditions imposed by this Agreement are satisfied [for example, the requirements are met, financing is available (if applicable), surveying is completed and streets and utility lines have been extended to the Real Estate (if applicable)].

The time and place of closing shall be agreed to by the parties in good faith. The closing agent or a lender may, for its convenience or accommodation, extend the closing date for not more than 7 days, provided that the extension does not cause a Commitment to expire. Upon payment of the Purchase Price in accordance with Subsections 1.01, 1.02, 1.03, or 1.04 (whichever is applicable), Seller shall deliver a properly executed general warranty deed ("Deed") conveying the Real Estate to Buyer. If the Real Estate is being purchased under a Contract, or a Note and Mortgage, the applicable document(s) shall be executed and delivered at closing, as provided in Subsection 1.04.

**20.02** Seller shall provide and pay for the Deed, or the Contract or any Note and Mortgage required under Subsection 1.03(b), and all other documents which are necessary for title to the Real Estate to meet legal requirements under this Agreement, for the transaction to comply with applicable tax laws, and comply with the Indiana Responsible Property Transfer Law (IC 13-7-22.5).

**20.03** In each case of delivery of a Deed by Seller, whether at closing or upon payment in full of a Contract, Seller shall also execute and deliver a Closing Affidavit and Representations ("Closing Affidavit") in the form approved by The Allen County Indiana Bar Association, Inc. at the time of delivery. If the Real Estate is being purchased under a Contract and Buyer requests a Closing Affidavit, Seller shall provide and pay for one at that time.

**20.04** Upon Buyer's written request (made by notice given before or at closing), Seller shall also provide and pay for a certification of non-foreign status under the Foreign Investment in Real Property Tax Act of 1980 (Pub. L. 93-479), as amended, ("FIRPTA") (see 26 U.S.C. § 1445) and regulations under it. If such certification is not so provided, Buyer may withhold from Seller's proceeds any tax due under FIRPTA.

**20.05** If the Real Estate is a subdivided lot, by closing, Seller shall furnish Buyer with evidence of proper approval and recordation of the subdivision plat and any applicable covenants.

**20.06** If this transaction is not closed because of Buyer's breach of this Agreement, or because Buyer or Buyer's Attorney gives notice to, or otherwise informs Seller, the Seller's Attorney or any agent of Seller, that Buyer does not intend to purchase the Real Estate, Seller may terminate this Agreement, and pursue appropriate remedies available under Subsections 16.01 and 21.01.

**20.07** Seller shall bear risk of loss and damage to the Real Estate until the time of closing, and Buyer shall bear such risk after such time.

**20.08** The fee charged by any closing agent (including an attorney acting as a closing agent for both parties, or Buyer's lender acting in such capacity) for closing services shall be paid equally by the parties, except Seller shall pay such fee if required by law. Any professional service fee due Buyer's or Seller's Attorney shall be withheld and paid by the closing agent at closing as provided in this Agreement.

**20.09** If by the date closing is held, the representations of Seller made in Subsection 8.01 are inaccurate or prove to be false, or the construction or bonding required under Subsection 8.02(a) (if applicable) has not occurred, Buyer may terminate this Agreement.

**Section 21. ADDITIONAL PROVISIONS REGARDING REMEDIES OF PARTIES.**

**21.01** If Buyer breaches this Agreement and the matter is not submitted to arbitration, Seller shall be entitled to file a complaint in a court of competent jurisdiction to recover in addition to any remedies available under this Agreement, all reasonable costs and expenses, including attorney fees, incurred by Seller due to Buyer's breach.

**21.02** If Seller breaches this Agreement and the matter is not submitted to arbitration, Buyer shall be entitled to file suit in a court of competent jurisdiction to recover in addition to any legal and equitable remedies available (including specific performance), all reasonable costs and expenses, including attorney fees, incurred by Buyer due to Seller's breach.

**21.03** The following are provisions for arbitration:

(a) The parties agree that the arbitrating agency ("Arbitrator") shall be the Better Business Bureau of Northeastern, Indiana, Inc. ("BBB"). However, if BBB is not able to conduct arbitration because it does not operate in a county where the Real Estate is located, but another Better Business Bureau operates there, that Better Business Bureau shall be the arbitrator, unless the parties agree on another arbitrator or arbitrating agency.

(b) If a party believes in good faith that the aggregate amount in controversy exceeds, or is likely to exceed, the monetary limit specified in Subsection 16.02, the party, as the objecting party, shall give the Arbitrator and the other party, notice to that effect. Each party may then give the Arbitrator (with a copy given to the other party) documents or writing to support the position of a party, within such time limits as the Arbitrator may impose. The Arbitrator will determine whether the aggregate amount in controversy is, or is likely to be, within the monetary limit specified in Subsection 16.02. The Arbitrator's determination of the amount in controversy shall not be binding upon the parties, and may be the subject of a declaratory judgment action in any court having jurisdiction of the controversy. If a party desires to contest the Arbitrator's determination of the amount in controversy, the parties shall file a declaratory judgment action in a court of complete jurisdiction within fifteen (15) days of the date the Arbitrator give notice to the parties of such determination. If such action is not filed timely, the parties shall waive the right to contest the Arbitrator's determination.

(c) If a determination is that the amount in controversy exceeds, or is likely to exceed, the monetary limit specified in Subsection 16.02 either party may withdraw from arbitration. However, both parties may consent in writing to arbitration, in which case the provisions of Subsection 21.03(j) apply.

(d) A party begins the process of arbitration by giving, to the other party and to the Arbitrator, a notice briefly stating the party's claim, the grounds for it, and the aggregate amount in controversy.

(e) Such notice is a request to start arbitration. Because this Agreement contains an agreement for binding arbitration as to matters within

the monetary limit specified in Subsection 16.02, no party may reject arbitration for failure to agree on the issues, or for failure to sign an agreement with the Arbitrator.

- (f) If a party seeks an award which includes:
  - (1) loss of wages;
  - (2) damages for personal injury or mental anguish, or both;
  - (3) punitive damages;
  - (4) consequential damages; or
  - (5) any other element of damages;

that party shall give, to the other party and to the Arbitrator, a notice to that effect. The notice shall state the amount claimed for each item for which an award is sought. An award cannot exceed the total amount sought by a party.

(g) the arbitrator shall conduct arbitration according to its rules, but **SUBJECT TO** the Indiana Uniform Arbitration Act (IC 34-57-1 (et seq.)), if the Real Estate is located in Indiana, or to an act or statute on arbitration of another state in which the Arbitrator operates and the Real Estate is located. In case of any conflict between rules of the Arbitrator and applicable legislation, the applicable legislation controls.

(h) The purpose of arbitration is to resolve dispute within the monetary limit specified in Subsection 16.02; and to provide for enforcement of the award by a court, if necessary, by its entering judgment on the award as authorized by applicable legislation.

(i) The parties shall share equally the cost of the arbitration process as determined under the rules of the Arbitrator and applicable legislation, the applicable legislation controls.

(j) In the arbitration process the Arbitrator shall neither award attorney fees nor allocate between the parties any other costs or expenses incurred by a party in the arbitration process. Each party shall be responsible for fees, costs or expenses incurred by such party, including fees, costs or expenses of legal counsel representing such party.

21.04 The provisions in Subsection 21.03 shall not affect the provision for recovery of fees and expenses of the Holder of earnest money as provided in Subsection 12.04.

21.05 The obligations of a party breaching this Agreement, and the rights of the other party to the remedies provided, shall survive this Agreement.

## **Section 22. MANNER OF TERMINATING THIS AGREEMENT AND NOTICE.**

22.01 If either party wishes to terminate this Agreement pursuant to an option to do so granted by this Agreement, a party shall give notice of termination, stating with reasonable detail the basis for termination. The termination shall become effective on the fifteenth day after the date notice is given, unless on or before that day:

(a) the defect or default stated in the notice is cured;

(b) the party having the option to terminate gives notice to the other party of either a WAIVER of the condition or contingency upon which such option is based, or an EXTENSION of the time within which such condition or contingency is to be performed or satisfied; or

(c) Buyer gives Seller notice that Buyer will pay the Purchase Price without regard to the manner of payment stated in Subsections 1.02 and 17.01, or Subsections 1.03 and 17.02.

22.02 Any notice provided under this Agreement shall be in writing and given to the other party at the party's address stated in this Agreement, or at such other address as a party may designate in a notice. Notice shall be deemed given when:

(a) personal service of the notice is made on the party to be notified;

(b) the notice is mailed to the party to be notified by means of certified or registered U.S. mail, return receipt requested, postage prepaid,

or

(c) the notice is sent to the party to be notified by express courier, such as "Federal Express", "UPS" or such other similar courier guaranteeing next day delivery.

22.03 Refusal by a party to accept delivery of a notice (whether by mail or otherwise) cannot defeat the giving of a notice.

## **Section 23. ENVIRONMENTAL REPRESENTATIONS OF SELLER.**

23.01 To the best knowledge of Seller, based on an inquiry of those persons directly responsible for gathering the information, there does not currently exist any actual or potential contamination of the soil, subsoil, ground water, or any other portion of the Real Estate by any hazardous or toxic substance or their constituents, or any underground tanks on the Real Estate (other than for the use of motor fuel or heating oil for use and consumption of Seller on the premises) and no environmental filings have been made concerning the Real Estate with any governmental agency.

23.02 To the best knowledge of Seller, based on an inquiry of those persons directly responsible for gathering the information, Seller has complied at all times with all applicable federal, state and local environmental laws and regulations, including, without limitation, the Indiana Responsible Property Transfer Law, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, the Toxic Substance Control Act, Superfund Amendments and Re-authorization Act of 1986, any of the regulations under them, and any other federal statute and any state statute or municipal ordinance creating liability for the treatment, storage, disposal, arranging, or the existence on the Real Estate of any hazardous or toxic substance, including their constituents. If required, Seller shall timely furnish Buyer with an environmental disclosure statement complying with the Indiana Responsible Property Transfer Law (IC 13-25-3).

## **Section 24. MISCELLANEOUS.**

24.01 This Agreement shall bind, and inure to the benefit of, the parties and their heirs, personal and legal representatives, successor and assigns, and shall be interpreted under the laws of the State of Indiana.

24.02 Time is of the essence of this Agreement.

24.03 Headings are for reference only, and do not affect the provisions of this Agreement. Where appropriate, the masculine gender shall include the feminine or the neuter, and the singular shall include the plural.

24.04 This Agreement contains all of the agreements of the parties, all prior negotiations, understandings and agreements having been merged into it. Amendments of this Agreement shall not be effective unless made in writing and signed by the parties.

24.05 In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday as defined under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or a legal holiday, except that such extension shall not be made for the day possession is to be delivered under Subsection 7.01.

24.06 Representations, warranties and agreements contained in this Agreement or in any notices, schedules, certificates, or statements delivered pursuant to this Agreement shall survive it, and shall remain in full force and effect, notwithstanding termination of this Agreement or a closing held under it.

**Section 25. REPRESENTATIONS.** No changes have been made to this Allen County Indiana Bar Association form except as noted in Section 14 (Other Provisions).

BUYER: \_\_\_\_\_  
(Signature)

BUYER: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed or Typed Name and Tax I.D. Number)

\_\_\_\_\_  
(Printed or Typed Name and Tax I.D. Number)

Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**UNCONDITIONAL ACCEPTANCE BY SELLER**

Seller accepts the offer made by Buyer as set forth above, without change or condition. Dated: \_\_\_\_\_, 20\_\_\_\_

SELLER: \_\_\_\_\_  
(Signature)

SELLER: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed or Typed Name and Tax I.D. Number)

\_\_\_\_\_  
(Printed or Typed Name and Tax I.D. Number)

Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**CONDITIONAL ACCEPTANCE BY SELLER [Counteroffer]**

Seller accepts the offer made by Buyer, SUBJECT, HOWEVER, TO THE FOLLOWING PROVISIONS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This counteroffer expires at 11:59 P.M. (local time), \_\_\_\_\_, 20\_\_\_\_. Dated: \_\_\_\_\_, 20\_\_\_\_

SELLER: \_\_\_\_\_  
(Signature)

SELLER: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed or Typed Name and Tax I.D. Number)

\_\_\_\_\_  
(Printed or Typed Name and Tax I.D. Number)

Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**BUYER'S ACCEPTANCE OF SELLER'S COUNTEROFFER**

Buyer accepts and agrees to the provisions set forth in Seller counteroffer. Dated: \_\_\_\_\_, 20\_\_\_\_

BUYER: \_\_\_\_\_  
(Signature)

BUYER: \_\_\_\_\_  
(Signature)

**EARNEST MONEY (Section 12 applies.)**

Received \$ \_\_\_\_\_ as earnest money on \_\_\_\_\_, 20\_\_\_\_ \_\_\_\_\_  
(Signature of Holder)

Received \$ \_\_\_\_\_ as earnest money on \_\_\_\_\_, 20\_\_\_\_ \_\_\_\_\_  
(Signature of Holder)

This Agreement was drafted by: \_\_\_\_\_, **BUYER'S / SELLER'S Attorney**

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