

RESIDENTIAL REAL ESTATE PURCHASE AGREEMENT

TO: _____ ("Seller"). Dated: _____, _____.
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, including the improvements and fixtures described in Section 6, 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 _____ % of the Purchase Price;

(2) (fixed) (adjustable) [~~Strike one~~] interest rate;

(3) [**interest rate of _____ %**] [**Market Rate**] (Strike one) "Market Rate" is the lowest interest rate usually available for a mortgage loan with the same terms as stated in this Section 1.02; by the same lender to which Buyer applies for the Loan. If neither provision in this Section 1.02(b)(3) is stricken, the Market Rate applies;

(4) amortization over _____ years; and

(5) 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.

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

(e) If a specific interest rate is stated in Section 1.02(b)(3), and Buyer can "lock in" that rate where Buyer applies for the Loan, but Buyer does not do so, Buyer may not terminate this Agreement if the interest rate for the Loan is greater than such stated rate.

(f) Should the Commitment be conditioned upon the sale or settlement of any other property or funds to be obtained that were not disclosed in this Agreement, Buyer may not terminate this Agreement.

(g) If Buyer fails to satisfy the requirements stated in Section 1.02(a), then Seller may seek the remedies available under Section 14 and 20.

(h) See Section 15.01 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.**

_____ (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 becomes effective, by The Allen County Indiana Bar Association, Inc. The Contract shall contain the provisions described in Section 1.04(c). The Contract shall also provide that the Real Estate (**may**) (**may not**) [~~Strike one~~] be leased or occupied by persons other than Buyer. Seller shall provide Buyer with evidence of title (**before execution of the Contract**) (**when the Contract is fully performed**) [~~Strike one~~]. See Section 16.03 for additional provisions which apply here. [Check if this provision applies.]

_____ (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 Section 1.04(c). Buyer agrees Seller may obtain an ALTA Loan Policy in the principal amount of the Mortgage. See Section 16.03 for additional provisions which apply here. [Check if this provision applies.]

_____ (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 If at the time of closing the tax bill for the Real Estate for the succeeding year has not been issued, taxes payable by either party shall be computed based on the last tax bill available to the closing agent. WARNING: The succeeding year's tax bill for recently constructed homes may greatly exceed the last tax bill available to the closing agent. [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 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. Buyer shall assume and pay all other assessments for such public improvements and charges. SELLER WARRANTS that Seller has not received notice of any planned improvement for which an assessment reasonably might be made, other than as is disclosed by the Seller to Buyer in this Agreement.

2.03 If the Real Estate is located in an area for which a community association ["Association"] has been, or is to be, formed, and membership in the Association is required, Buyer will accept delivery of the Deed or the Contract with knowledge of the membership requirement. Membership in the Association may require (among other things) payment of dues (whether regular or special, and however payable--annually or otherwise), maintenance fees and other assessments, any of which would become a lien against the Real Estate, if unpaid. Such dues, fees and assessments are called "Association Dues." Buyer has been informed that Association Dues payable by the owner of the Real Estate in the calendar year in which closing is to occur are \$ _____. Association Dues payable in the calendar year in which closing occurs shall be paid by the parties 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.

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 Section 16 for additional provisions which apply.

Section 5. ZONING.

5.01 Buyer's intended use of the Real Estate is _____.

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

Section 6. IMPROVEMENTS AND FIXTURES. The Real Estate includes all improvements and permanent fixtures used in connection with it, including, but not limited to: electrical, gas, central heating, central air conditioning, and plumbing (including sewage disposal) systems, water softener(s), water heater(s), built-in appliances, screens, screen doors, storm windows, shades, blinds, drapery hardware, awnings, shutters, attached floor covering, radio or television antennas (but excluding any satellite receiving station or dish, components and wiring), garage door openers with all activators, attached shelving, trees, shrubs, flowers, fences, and the following items: _____

_____ now in or on the Real Estate (except rental units). Except for a mortgage on the Real Estate being assumed under Section 1.03, such improvements and fixtures shall have their cost fully paid and shall be free of liens as of the time of closing.

Section 7. CONDITION OF REAL ESTATE.

7.01 **Election by Buyer.** This Agreement contains IMPORTANT PROVISIONS set forth in Section 18. By initialing below, Buyer selects which of Section 18.01 or 18.02 is to apply. [Select ONLY ONE of the following: each person who is a Buyer must initial].

_____ (a) Buyer's right to inspection under Section 18.01. _____ [Initials of Buyer]

_____ (b) WAIVER of defects and RELEASE of Seller - "AS IS" transaction under Section 18.02. _____ [Initials of Buyer]

7.02 **Maintenance.** See Section 18.03 for provisions which apply here.

7.03 **Survival.** The provisions of Section 18 agreed to by the parties shall survive closing.

Section 8. EARNEST MONEY.

8.01 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 Section 14 and 20.

8.02 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.

8.03 **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 Section 21. 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 a court of competent jurisdiction directing disposition of the earnest money; or

(b) 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.

8.04 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.

8.05 If a period of 90 days elapses from the date Holder sends an Authorization under Section 8.03, and Holder neither receives an executed Authorization from both parties, nor receives notice of the commencement of 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. Unless Holder receives notice in said 30-day period of the filing of suit, Holder shall disburse the earnest money in the manner and to the persons designated in the notice. Thereafter, the parties shall have no further claims, actions or causes of actions against each other arising out of the disposition of the earnest money.

Section 9. CLOSING.

9.01 The closing shall be held on or before _____, _____. If closing does not occur on or before said date, either party may terminate this Agreement if the failure to close is not the result of a default under this Agreement by the party seeking termination. The parties may agree in writing to an extension of the closing date stated in this Section 9.01.

9.02 See Section 19 for additional provisions which apply here.

Section 10. POSSESSION, RENT, INSURANCE, UTILITIES AND SECURITY DEPOSIT.

10.01 Seller shall deliver possession of the Real Estate as marked below [If there is no mark "at closing" shall apply] [Mark one] (at closing); (within _____ days after closing); (by _____, _____ provided closing occurs by such date; and if it does not, at closing).

As rent for each day Seller is entitled to possession after closing under this Section 10.01, Seller shall pay to Buyer: [Mark one]

_____ (a) no rent; or

_____ (b) an amount equal to 1% of the Purchase Price divided by 30 and multiplied by the number of days Seller is entitled to possession after closing. Such rent shall be withheld from Seller's proceeds and paid or credited to Buyer at closing.

If neither box is marked, Seller's possession under this Section 10.01 shall be rent free.

10.02 If Seller fails to deliver possession as required by Section 10.01, Seller shall become a tenant at sufferance, and then become obligated to pay to Buyer an amount equal to 1% of the Purchase Price divided by 15, and multiplied by the number of days Seller retains possession under this Section 10.02.

10.03 Unless Seller and Buyer agree otherwise in writing, the amount payable under Section 10.02 shall be due on the date Seller delivers possession of the Real Estate. Failure of Seller to pay such amount when due constitutes a breach of this Agreement, and entitles Buyer to the remedies of Section 20.

10.04 Insurance shall be cancelled by the Seller as of the date of closing except for contents. Seller shall pay all charges for utility services furnished the Real Estate while Seller was in possession. Any rent due from a tenant of Seller on the Real Estate shall be prorated to the date of closing. At closing, Seller shall deliver to Buyer any lease agreement and security deposit then held for any such tenant and Buyer agrees to accept said security deposit and assume all responsibilities under the Indiana Security Deposit Statute (IC 32-7-5).

10.05 Buyer's remedies under Section 20 shall not be limited by the provisions in Section 10.02. Seller's obligations under Section 10 shall survive closing.

Section 11. AGREEMENT.

11.01 Offer, Acceptance and Delivery. By executing and delivering this Agreement, Buyer is making an offer to Seller. Buyer's offer expires at 11:59 P.M. (local time). _____, _____, unless Seller timely accepts it. Any counteroffer shall be in writing. 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.

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 Section 8.01 (if applicable).

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

Section 12. OTHER PROVISIONS _____

_____.

Section 13. ATTORNEY RELATIONSHIP AND DISCLOSURE FORM.

13.01 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.

13.02 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 24-4.6-2, as amended.

_____ (b) Buyer has not received an executed Seller's Residential Real Estate Disclosure Form required under IC 24-4.6-2, as amended.

Section 14. REMEDIES OF PARTIES.

14.01 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 Section 20, Seller shall then have no other remedy against Buyer at law or in equity. Earnest money deposited shall be credited against the Damages.

14.02 See Section 20 for additional provisions which apply.

Section 15. ADDITIONAL PROVISIONS REGARDING PAYMENT OF PURCHASE PRICE.

15.01 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) If repairs are required in connection with a federally insured or guaranteed mortgage loan, Seller may elect to pay for such repairs, or terminate this Agreement. However, this Agreement shall not terminate if Buyer assumes the cost of such repairs and so notifies Seller in writing within 5 days after receipt of notice of Seller's election to terminate.

(c) 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.

(d) 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.

(e) 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 Sections 1.02(c) and 19.08.

(f) If Buyer having financing available upon terms at least as favorable as those stated in Section 1.02(b), fails to purchase the Real Estate, and Seller has not breached this Agreement, Seller may seek the remedies available under Sections 14 and 20.

15.02 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 Section 15.02(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 Section 15.02(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 16. ADDITIONAL PROVISIONS REGARDING EVIDENCE OF TITLE.

16.01 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.

16.02 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 Section 5.01, or as otherwise provided in this Agreement.

16.03 Notwithstanding Seller's obligation under Section 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.

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

Section 17. SURVEY.

17.01 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.

Section 18. ADDITIONAL PROVISIONS REGARDING CONDITION OF REAL ESTATE.

18.01 Buyer's Right to Inspection.

(a) Buyer may have the Real Estate inspected, and Seller agrees to make it and all of its systems available for that purpose. All inspections and complete written reports of them (except those required by a lender in connection with a mortgage loan) shall be made and delivered within 15 days after 15 days after the date this Agreement becomes effective. Delivery of reports shall be made to Buyer in the same manner as notice is given under Section 21.01.

(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 systems and items: electrical, gas, central heating, central air conditioning and plumbing (including sewage disposal and sump pumps) systems; well; built-in appliances; roof, walls; ceilings; floors; foundations; basement; crawl space; hazardous or toxic substances, including radon and lead-based paint (Pre-1978); and wood eating insect infestation. Buyer may also have inspections of a septic system and the quality of water in a well on the Real Estate to determine whether they satisfy standards imposed by the Board of Health of the county in which the Real Estate is located. **INSPECTIONS REQUIRED BY A LENDER DO NOT FULFILL BUYER'S RIGHT OF INSPECTION UNDER SECTION 18.01.**

(c) The purpose of inspections is to determine whether any system or item inspected has a "Major Defect." A "Major Defect" is a condition that would:

- (1) have a significant, adverse effect on the value of the Real Estate; or
- (2) significantly impair the health or safety of future occupants of the Real Estate; or
- (3) significantly shorten or adversely affect the expected normal life of the Real Estate if not repaired, removed, or replaced.

If an inspection report reveals a Major Defect and Buyer wants it cured, Buyer shall give Seller a complete copy of the report within 5 days after receiving it, identifying either on the copy or in a separate document delivered with the copy the Major Defect(s) Buyer wants cured. Within 10 days after such copy or document is delivered, Seller shall give Buyer a notice identifying which of such Major Defect(s) (all, some or none - to be stated in the notice) Seller is willing to cure. If Seller responds that Seller is willing to cure only some or none of the Major Defect(s) Buyer wants cured, Buyer shall have 5 days after receipt of the response within which to accept or reject the response. If the inspection report recommends further inspection be performed, such inspections shall be at Buyer's expense. Each Major Defect Seller undertakes to cure shall be cured to Buyer's reasonable satisfaction and before closing -- or at another time agreed to by the parties.

Delivery of reports shall be made to Seller in the same manner as notice is given under Section 21.02.

- (d) Subject to Section 18.01(e), either party may terminate this Agreement if:
- (1) Seller states in the response under (c) above that Seller will not cure all Major Defect(s) Buyer wants cured, or
 - (2) Buyer rejects the response under (c) above, or
 - (3) either party fails to act timely as the party is required party is required under this Section 18.01(c).

(e) 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.

(f) **WAIVER:** If Buyer fails to timely obtain the inspection and the report described in Section 18.01(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 Section 18.01.

18.02 **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 Section 18.01 be made, and that Section 18.01 apply. BUYER WAIVES THE RIGHT TO HAVE SUCH INSPECTIONS AND TO HAVE Section 18.01 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.

18.03 **Maintenance.**

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

(1) [if Section 18.01 applies] at the later of the time: (A) of Buyer's last inspection made under Section 18.01(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 Section 18.02 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 Section 18.03(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 Section 18.01(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.

Section 19. ADDITIONAL PROVISIONS REGARDING CLOSING.

19.01 The time and place of closing shall be agreed to by the parties in good faith. Upon payment of the Purchase Price in accordance with Sections 1.01, 1.02, 1.03, or 1.04 (e) (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 Section 1.04.

19.02 Seller shall provide and pay for the Deed, or the Contract or any Note and Mortgage required under Section 1.04(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).

19.03 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.

19.04 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.

19.05 If this transaction is not closed for failure of title to meet legal requirements or for failure of Seller to convey by Deed as required, or to execute and deliver a Contract, or other document as required, in each case as of the time of closing, Buyer may terminate this Agreement and also pursue appropriate remedies available under Section 20.

19.06 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 Sections 14 and 20.

19.07 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.

19.08 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.

Section 20. ADDITIONAL PROVISIONS REGARDING REMEDIES OF PARTIES.

20.01 If Buyer breaches this Agreement, Seller shall be entitled to file suit 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.

20.02 If Seller breaches this Agreement, 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.

20.03 The provisions in Sections 20.01 and 20.02 shall not affect the provision for recovery of fees and expenses of the Holder of earnest money as provided in Section 8.04.

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

Section 21. MANNER OF TERMINATING THIS AGREEMENT AND NOTICE.

21.01 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 Sections 1.02 and 15.01, or Sections 1.03 and 15.02.

21.02 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, or such other similar courier guaranteeing next day delivery.

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

Section 22. MISCELLANEOUS.

22.01 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.

22.02 Time is of the essence of this Agreement.

22.03 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.

22.04 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.

22.05 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 Section 10.01.

22.06 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 23. REPRESENTATIONS. No changes have been made to this Allen County Indiana Bar Association form except as noted in Section 12 (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: _____

Address: _____

Telephone: _____

Telephone: _____

UNCONDITIONAL ACCEPTANCE BY SELLER

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

SELLER: _____
(Signature)

SELLER: _____
(Signature)

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

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

Address: _____

Address: _____

Telephone: _____

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), _____, _____, Dated: _____, _____

SELLER: _____
(Signature)

SELLER: _____
(Signature)

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

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

Address: _____

Address: _____

Telephone: _____

Telephone: _____

BUYER'S ACCEPTANCE OF SELLER'S COUNTEROFFER

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

BUYER: _____
(Signature)

BUYER: _____
(Signature)

EARNEST MONEY (Section 8 applies.)

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

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

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

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LEAD-BASED PAINT CERTIFICATION AND ACKNOWLEDGMENT (PRE-1978)

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

(SALES)

PROPERTY ADDRESS _____

LEAD WARNING STATEMENT

Every buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

SELLER'S DISCLOSURE

- (a) Presence of lead-based paint and/or lead-based paint hazards: (check (1) or (2) below)
(1) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):
(2) Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
(b) Records and reports available to the Seller: (check (1) or (2) below)
(1) Seller has provided the Buyer with all available records and reports including Seller's Residential Real Estate Sales Disclosure form, if applicable, pertaining to lead-based paint and/or lead-based paint hazards in the housing (list and attach documents below):
(2) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.
(c) Check, if Disclosure is not applicable [Post-1977]

BUYER'S ACKNOWLEDGMENT (Initial)

- (d) Buyer has received copies of all information listed above.
(e) Buyer has received the pamphlet Protect Your Family From Lead in Your Home
(f) Buyer has (check (1) or (2) below):
(1) received a 15-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards;
OR
(2) waived the opportunity to conduct a risk assessment or inspection for the presence or lead-based paint and/or lead-based paint hazards.

CERTIFICATION OF ACCURACY

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate. This Certification and Acknowledgment may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that this Certification and Acknowledgment may be transmitted between them by facsimile machine. The parties intend that faxed signatures constitute original signatures and are binding on the parties. The original document shall be promptly executed and/or delivered, if requested.

BUYER'S SIGNATURE DATE

SELLER'S SIGNATURE DATE

PRINTED

PRINTED

BUYER'S SIGNATURE

SELLER'S SIGNATURE

PRINTED

PRINTED