*COMMERCIAL REAL ESTATE CONTRACTS*

*In The*

*Baltimore, Maryland*

*Market Area*

|  |  |
| --- | --- |
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*Table of Contents*

**Commercial Real Estate Contracts**

By: Douglas L. Burgess and Robert Aumiller and Joe Bradley

|  |  |  |  |
| --- | --- | --- | --- |
| **P** | **§** | **TOPIC** | **Page** |
| d/ | 1 | **Introduction – Types of Transactions – raw land; finished lots; improved land; improved land with building; improved land with building with retail industrial or office cash flow** | 3 |
| a/b | 2 | **Role of the Broker – Preliminary Due diligence on buyer and seller and property; vision for the property, exit and entrance strategies for buyer and seller** | 5 |
| a / b | 3 | **Letter of Intent (LOI) / Term Sheet** | 7 |
| *d/ a/b* | 4 | **Pre-Contract Considerations – zoning, use, developability, usability, parking rent roll, environmental, financing, valuing the property, value to an owner operator versus value to an investor** | 14 |
| d | 5 | **Contract Drafting –**  Relative Bargaining Power  Turnaround  Style of Contract and Readability  Word-processing  Exhibits  Definitions  Checklists  Bare Bones List  Buyer and Seller List  Seller List  Buyer List  -Sample bare bones contract for review and what is missing? | 16 |
| a/ b | 5 | **Contract - Down Payment and Financing – Comments from Broker** |  |
| a/b | 5 | **Contract -** **Study Period - typical provisions and problems// Zoning, Use, Permits, Density, Parking, SWM – comments from Broker** |  |
| a/b | 5 | **Casualty Loss or What if the Property burns down during the contract – Comments from Broker** |  |
| d |  | **Closing Agenda – this is where the deal ends up at the end of the contract so begin with the end in mind** |  |
| a/b/d |  | **Closing Thoughts and Q and A** |  |

**Introduction & Types of Transaction**

**Introduction**

***Typical Scenario***

Client or Broker calls you in a rush and says we need a contract for xyz property and its closing in two weeks.

Name some of the questions you need to ask if you are in this situation and documenting the deal, and name them in the order of priority?... Here’s a possible list

* Relative ***bargaining power*** of the buyer and seller
* Is there a term sheet or ***Letter of Intent*** (LOI)
* What ***type of property*** is being purchased?
  + Raw land
    - Eventual purpose of the raw land
  + Finished lots (what is a finished lot?)
    - Residential (SFD or apartments)
    - Industrial
    - Retail – (e.g. out parcel for bank or restaurant)
    - Other
  + Improved Land
    - Office Building for Owner’s Use or For Investment
      * Building that needs to be taken down/ interim use or redeveloped
      * Building with tenants
    - Retail (e.g. strip shopping center or corner gas n go or fast food or pharmacy or Tires Battery Auto (TBA) site)
    - Industrial
      * (what is industrial?)
    - Hospitality (e.g. hotel, club, resort or camp)
* ***Red Flags in the Transaction***
  + Ask the broker or the client if they have any concerns
    - Financing
    - Cash Flow
    - Tenants Leaving
    - Environmental/ Title/ Survey/ Rent Rolls/ Operating Budgets
    - Usability for the Owner or Tenants
      * Parking, Parking, Parking
      * Access, Access, Access, in and out of Road System
    - Can you re-sell it easily later or will the red flags prevent that
    - Title tie up if the deal goes sour and litigation results

**Role of the Broker**

**ROLE OF COMMERCIAL BROKERError! Bookmark not defined.**

* To know the market and how to research it/ many values are not publicly available like rent rolls and rent histories and are closely guarded by Sellers and Landlords/ without this information (which good brokers have a handle on), it’s hard to place value on property, at least income producing property
* In a tight market, a good broker knows the “Right Call” to make in locating properties
* Without Representation, a Tenant/Buyer will often not be taken seriously by most Landlords/Sellers with sophistication
* After a property is located, a broker’s role expands
* There is NO substitute for market experience…
  + Typically know parties on the other side of the deal (either broker or Principal)
  + It is nearly impossible to conduct RE business without intimate market knowledge.
  + Knowing the “Margin” for a deal is critical
  + Knowing the rate or return or cap rate that can be expected for each market and time period and type of property is within a good broker’s knowledge and it is invaluable
* Sellers/Landlords have no obligation to inform Tenants of market conditions. Buyers/Tenants often “think” they are getting a deal, when they are leaving a lot on the table. Sellers/Landlords factor broker fees into their proforma.
* Successful brokers know the right call to make and how to assemble the right team (appraisals,architects, contractors, attorneys, zoning county officials, title companies, appropriate lenders, etc.).
  + Note: some of the larger broker companies have internal resources that include a research department that can value a transaction
* Brokers involvement creates competition (real or perceived) by providing alternative options
* Negotiating in the same community… often provides experience and knowledge of the parameters limiting the other side of the transaction or ways to solve them
  + Owner’s Lender constraints?
  + Is Owner well capitalized?
  + Is Buyer/Tenant out of space or capital?
  + Does Seller have a capital gain problem, and if so is an exchange appropriate under Internal Revenue Code 1031?
  + Ground lease appropriate property? Seller take back appropriate?
  + Knowing what is important to different Sellers/Landlords?
* Brokers and attorneys need to communicate for a successful and efficient transaction

BROKER SUMMARY

* Assemble project team
* Evaluate the market. The only way to understand the “ebb and flow” of market conditions
* Negotiate Business Terms
* Facilitate planning
* Create Bargaining Position

**Letter of Intent**

**What is a Letter of Intent (LOI) and …… Why are We doing one?**

* A Letter of Intent is a non-binding proposed Term Sheet – from the Attorney Perspective
* A Letter of Intent is term sheet that is binding as to some or all of its parts – from the Broker’s perspective
* Number One Reason to do one – It’s Common in the Baltimore Market
  + Let’s Buyer gauge interest without huge expenditure of professional fees
  + Let’s Buyer move quickly to another property if no Seller traction
  + Broker will usually draft these
    - Sometimes the term sheet will be passed to the Attorney to review
* **Top Techniques in Drafting**
  + From Broker’s perspective include key items but don’t get overly detailed unless its key to making the deal work
  + From the Attorney’s perspective, some commentators say make sure it’s a **non-binding letter**
    - Some attorney’s will include disclaimer of duty, otherwise implied by law, to negotiate in good faith
    - have you agreed to agree? Do you intend that?
  + On the other hand you may want to make the LOI **binding** in some respects to hold the deal together until you can paper it….
    - What is the risk when you do that and what is the benefit?
* **Common Issues to Consider** Consider making this binding in the LOI
  + No shop
  + Confidentiality

**SAMPLES of LOIs**

Mr. Joe Smith

ABCD Company

A Road, Suite 1

Anywhere, State 00000

**Re: Letter of Intent to Purchase / Building Address**

Dear Joe:

We have been authorized by MadeUp Partners, LLC or its assign ("Purchaser") to present this Letter of Intent to summarize the basic terms and conditions pursuant to which Purchaser is prepared to buy from AB2AB Companies ("Seller") the property known as 100 Street, City, State 00000 ("Property"). Provided that the terms of this Letter of Intent are acceptable, we are prepared to immediately forward a Contract of Sale ("Contract") to you, setting forth in greater detail the basic terms and conditions outlined below:

1. **Property.** The following paragraphs summarize the Purchaser’s understanding of the Property.

a. The Property contains 34,882 ± rentable square feet and is contained within Suite 130 at 100 Street, City, State 00000

b. Seller has not participated in or approved, nor has there occurred any production, disposal or storage on the Property of any hazardous waste or toxic substance nor, to Seller’s knowledge, does such waste or substance exist on the Property. At closing Seller shall represent and warrant that the property is clear of any hazardous or toxic materials.

c. All equipment (including lights and unit heaters) shall that is currently in the space shall remain in the space and be included within the purchase price.

d. The Seller shall deliver the premises fully demised and separately metered.

2. **Purchase Price**. The Purchase Price shall be One Million Seven Hundred Forty Four Thousand Dollars ($1,744,000.00).

3. **Study Period.** The Buyer shall have a period of forty-five (45) days from the date of execution of an Agreement of Sale to study the property and perform whatever tests or studies deemed necessary to determine the condition of the property. During this study period, as well as the time leading up to Closing, the Buyers, its employees and contractors, shall have reasonable access to the property to perform these tests and studies provided they do not materially interfere with the current occupant’s use of the property. If, during or at the end of this forty-five (45) day study period the Buyer determines the property is not to their satisfaction, the Buyer shall have the right to terminate this agreement and be entitled to a complete refund of the deposit. In this event, the Seller shall be entitled to copies of all tests and studies conducted by Buyer during the study period.

Immediately upon the execution of an Agreement of Sale, the Seller shall deliver to Buyer pertinent information regarding this property.

4. **Financing.** This Letter of Intent to Purchase is not contingent upon Buyer securing financing as purchaser will be paying cash for the property.

5. **Title and Escrow.** At Closing, Seller will deliver good, marketable and insurable title to Purchaser, free and clear of all liens, rights, claims or encumbrances, except those conditions not excepted to following the receipt of a preliminary title report to be obtained and approved by Purchaser.

6. **Document Production.** Within five (5) business days after execution of the Contract, Seller agrees to deliver and/or make available to the Purchaser, copies of all items in the Seller’s possession related to the construction, operation, maintenance, occupancy and use of the Property, including and not limited to:

a. Current and historic operating statements itemizing income and expenses, as well as a list of capital expenditures made by the Owner on the Building over the past three (3) years.

b. Current year budget plus narrative.

c. Working drawings and as-built plans for the improvements on the Property.

d. Certificates of occupancy for the improvements on the Property.

e. All service and maintenance contracts, warranties, guarantees or indemnities.

f. Engineer’s reports, soil reports, environmental reports (including asbestos reports if any), and other professional reports or surveys in the possession of, or available to, Seller.

g. Current preliminary title report, including legible copies of all exceptions.

h. All property tax statements, existing assessments, bonds, impositions, and information on any contemplated future assessments to be levied against the Property.

1. Other information that the Purchaser may reasonably request.

7. **Settlement.** Settlement shall occur within thirty (30) days after the expiration of the study period. The property shall be conveyed at the time of settlement.

8 **Assignment.** Purchaser shall have the right to assign the Contract to an entity owned and/or controlled by principals of the Purchaser.

9. **Adjustments & Closings.** At the time of settlement, all governmental charges shall be adjusted between the parties on a pro rata basis and thereafter be assumed by the Buyer. These adjustments shall include real estate taxes, water and sewer benefit charges. All normal Closing costs to include state and city transfer taxes, and recordation taxes shall be evenly divided between Buyer and Seller.

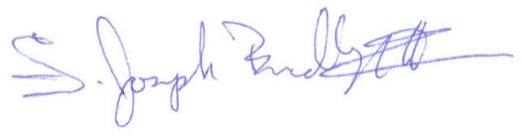
10. **Brokerage.** The parties hereby recognize ABCD Company, in cooperation with MacKenzie Commercial Real Estate Services, LLC, as the sole brokers involved in this transaction. The parties agree and understand that the Seller shall be responsible for a market commission of six percent (6%), to be split evenly between buyer’s and seller’s agent that is due and payable to said Brokers at settlement.

11. **Contract of Sale.** Within ten (10) business days, or less if possible, of the mutual execution of this “Letter of Intent”, Purchaser and Seller shall enter into a Contract based upon the general terms and conditions set forth above, including commercially reasonable representations and warranties.

12. **Acceptance.** This "letter of intent" constitutes an offer to Seller which summarizes the basic business terms and conditions under which Purchaser proposes to purchase the Property. Seller shall have until 5:00 p.m. on Wednesday, November 15, 2012 to accept this "letter of intent". Upon acceptance, Seller agrees to remove the Property from the market for a period of not less than thirty (30) days during which time Seller and Purchaser will negotiate in good faith to arrive at a mutually acceptable Contract which shall embody the terms and understandings set forth herein, and subject to such other additional terms and conditions as may be mutually agreed upon between the parties.

Provided the Seller is in agreement with the foregoing, please have the Seller execute a copy of this Letter of Intent and return same to me. We look forward to the working with you and await your response. If you should have any questions, please feel free to contact me directly (410-494-4892) or Bob (410-494-4885).

Sincerely,



F. Joseph Bradley, III, SIOR Robert J. Aumiller

Vice President

Agreed and accepted

SELLER: ABCD Company

By: Date:

Tom Tom, Managing Member

BUYER: MadeUp Partners, LLC

By: Date:

Joe Smith, Partner

FJB/tb

**Another Example:**

Mr. Joe Smith

ABCD Real Estate

A Road, Suite 1

Anywhere, State 00000

**Re: Property Address**

Dear Joe:

Please be advised that I have been authorized to present this proposal to purchase the above referenced property.

PROPERTY: All that property located at 100 Street, City, State 00000 containing 1.59 acres of land area and improved by an 18,596 square foot ± office building, commonly known as the Office Building, as shown on County Tax Map 73, Parcel 731 and recorded in the Land Records of County under Liber 02255/00156.

BUYER: MadeUp Partners, LLC

SELLER: AB2AB Companies

PRICE: At and for the price of $1,650,000

DEPOSIT: A total deposit in the amount of $25,000 shall be paid to MacKenzie Commercial Real Estate Services, LLC and placed in escrow, for the benefit of the Seller until the time of Closing, unless returned to the Buyer as provided herein.

STUDY PERIOD: The Buyer shall have a period of sixty (60) days from the date of execution of an Agreement of Sale to study the property and perform whatever tests or studies deemed necessary to determine the condition of the property. During this study period, as well as the time leading up to Closing, the Buyers, its employees and contractors, shall have reasonable access to the property to perform these tests and studies provided they do not materially interfere with the current occupants use of the property. However, Buyer shall have the right to meet briefly with each Tenant. If during or at the end of this sixty (60) day study period the Buyer determines the condition of the property is not to their satisfaction, the Buyer shall have the right to terminate this agreement and be entitled to a complete refund of the deposit. In this event, the Seller shall be entitled to copies of all tests and studies conducted by Buyer during the study period.

Immediately upon the execution of an Agreement of Sale, the Seller shall deliver to Buyer copies of all current leases, operating statements (with supporting documentation) for the last three (3) years, any existing HVAC warranties, roof warranties, State of Maryland inspection certificate for the elevator, as well as any other pertinent information regarding this property.

TITLE: Immediately upon the execution of an agreement of sale, the Buyer shall, at its expense, order a report which indicates a “fee simple” title to the property, good and sufficient and insurable at normal rates for properties in the surrounding area. Within sixty (60) days from the date of the Agreement of Sale, should the Buyer discover the title does not meet these requirements, the Buyer may terminate the Agreement of Sale and be entitled a complete refund of the deposit.

SETTLEMENT: Settlement shall occur within sixty (60) days after the expiration of the study period. The property shall be conveyed at the time of settlement, subject to all current leases and tenancies.

ADJUSTMENTS &

CLOSING COSTS: At the time of settlement, all governmental charges shall be adjusted between the parties on a pro rata basis and thereafter be assumed by the Buyer. These adjustments shall include real estate taxes, water and sewer benefit charges. All normal Closing costs to include state and city transfer taxes, and recordation taxes shall be evenly divided between Buyer and Seller.

LEGAL FEES: Each party shall be responsible for their own legal fees associated with this transaction.

BROKERAGE: The parties hereby recognize ABCD Real Estate in cooperation with MacKenzie Commercial Real Estate Services, LLC as the sole brokers involved in this transaction. The parties agree and understand that the Seller shall be responsible for all fees and commissions due and payable to said Brokers pursuant to a separate agreement between Seller and ABCD Commercial Real Estate Services. However, in no event shall MacKenzie Commercial Real Estate Services receive a commission less than 3% of the purchase price.

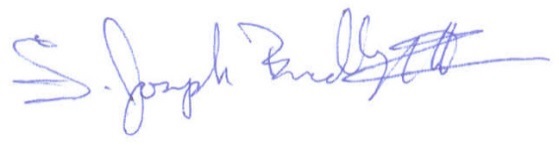
I am hopeful these terms and conditions will meet with the approval of the Seller and form the basis for a formal Agreement of Sale. Assuming this to be the case, please have this proposal signed where indicated and return an executed copy to my attention. Immediately upon receipt, the Buyer shall draft an Agreement of Sale for your review.

Thank you for your consideration.

Sincerely,

MacKenzie Commercial Real Estate Services, LLC

(agent for MadeUp Partners, LLC)



F. Joseph Bradley, III, SIOR

Vice President

FJB/tb

Agreed and accepted

SELLER: AB2AB Companies

By: Date:

Tom Tom, Managing Member

BUYER: MadeUp Partners, LLC

By: Date:

Joe Smith, Partner

**Pre-Contract Considerations**

* **Value to an owner operator versus value to an investor**
* **zoning, usability, developability**
  + Number One Question with raw land or finished lot
    - How large a building will fit on this parcel
      * What is the rough guess answer and how do you come up with it
        + Surprise answer is in the local parking requirements
    - What type of Buyers might be interested in this property and why
  + Developability
  + Usability
* **Access**
* **Traffic Counts**
* **Rent roll, copies of lease, estoppels, sndas**
* **Environmental**
* **Financing**
* **Valuing the property**
  + Cap Rate or Rate of Return
* **Other Considerations**
  + How to interview the client one time so you get all the information you need one time about the contract you are drafting
    - **Number One Technique**
      * Get hold of the Letter of Intent
      * Use a Checklist
      * Use databases on your computer to double check the Letter of Intent to make sure you can document what is intended
        + Mdlandrec/ SDAT/ casesearch/ pacer/loopnet/ costar/ and any preliminary deliverables provided to you
      * Drafting - If you can’t understand and wordsmith the deal, the Judge won’t understand it either

**Contract Drafting**

**Things to do when Contract Drafting, in order of priority**

**Preliminaries**

* Determine ***relative bargaining power*** of the parties and risk reward tolerance / sophistication level of the client. Why?
* Try to *control the drafting process* if your client has the stomach for it. Why?
  + Familiarity with your customary form
  + No need for wholesale revisions
  + Protects against the “booby traps” hidden in those double negatives
  + Time trap to undo an unclear and completely one sided contract
    - Burden of persuasion and avoiding the jargon… examples
      * No one have ever objected to this clause in my form contract
      * No one has ever questioned title or zoning or access and utility easement and you are the last of the five (5) out parcel deals, why are you bringing this issue up in the contract………….etc etc etc
  + Why not to prepare the first draft of the contract? Any answers out there….. One could be………If you think the other side is not serious about the deal….Perceived Cost
* ***Turnaround….. and Balancing Cost versus Completeness***
  + Lawyers, in the past, we loathe to consider cost vs. completeness
    - Wordy hard to read contracts were sometimes the result
  + Couple of answers to this common problem
    - Study Period
    - Attorneys, just like Brokers, know the market
      * Who are you dealing with on the other side of the deal?
        + Build up your level of trust and the other side with reciprocate on the next deal
        + Understanding how transactions are commonly done on cooperative basis can lead to contracts with familiar clauses and less back and forth
      * Is there a no assignment or no flip provision
        + If so its easy to know who you are dealing with and end up with a commonly done cooperative contract
      * How complicated is the deal and what are the bargaining powers
* ***Style of the Contract***
  + Current trends in Style
    - Military Style
      * Example:
        + **1.0 Parties.** John Doe, Buyer and Sally Smith, Seller

**1.1 Assignment.**  Buyer mays assign this contract to an entity controlled by him upon approval of Seller, upon written approval of Seller, which said approval shall not be unreasonably withheld, etc. etc.

* + Left Justify is the style now the style as it aids readibilty
  + Use a lot of white spaces between paragraphs or concepts
  + **Bold** the paragraph concept for readability and quick reference
  + **Readability…. And Following the Concepts**
    - **Test your drafting…..**Draft so the non-attorney can read it
    - Why? The person who will interpret is the Judge……will the the ex-prosecutor who is now a Judge and has no background in real estate contracts…. Follow the concepts
  + **Have a Checklist**
    - Source of Checklists
      * Headings in Former Contracts
      * ABA CLE
      * Lexis Nexis
      * IICLE
  + **Word-processing**
    - Attorney skill in using Word is critical and becoming state of the art
    - Metadata and version control
    - Track changes and sharing edits is the state is the state of the art
    - Collaborative editing using Chrome cast or Apple TV to a common monitor at a meeting room
  + **Definitions**
    - Do you put definitions in Body of Contract…….or
    - Separate Definition Table
  + **Exhibits and Addenda**
  + **Using Addenda as a Technique**
  + Why use this technique
  + Exhibits add clarity

**Contract Checklists**

* + **Bare Bones** Checklist for **All Contracts**
    - In writing, signed by parties and delivered
    - Buyer
    - Seller
    - Accurate Property Description
    - Buy and sale language - fee simple
    - ***Consideration***
    - *Closing Date*
    - Required Provisions under Governmental Laws and Regs
      * Trap for the unwary or way to get out of unfavorable contract
        + E.g. Balto Co Code provisions

Historic property

Panhandle

100 year floodplain

Utility, well, septic notices

* + - * + Lead paint disclosures when you are selling that older apartment building
  + **Additional Items** **Both Seller and Buyer** have on their Checklists
    - * Brokerage - Specify broker or no broker and indemnity clause regarding same// including cost of defense
      * *Boilerplate*
        + *Current trend – counterparts and e- signatures*
  + **Seller side** minimum additional contract checklist items
    - * Good funds at settlement
      * Representation Buyer has financial capacity to close
      * Large Deposit
      * Buyer is locked in once the contract goes “hard”
      * As is or working condition or same condition as at contract
      * Title – insurable
      * Confirm Transfer Taxes Split or on Buyer
      * Adjustments at Settlement
      * Like Kind Exchange IRC 1031 Addendum
      * Breach of Contract and Damages
        + Actual and Incidental Damages for Buyer breach
        + Current Trend = Damages for Buyer failure to close = hard to determine.. so the damage is the large deposit
        + Failure to settle by Seller = get your deposit back
        + Notice and cure rights related to any alleged default
      * **Attorney’s Fees - contract disputes**
      * No recordation of contract
      * Waiver of Jury Trial
      * Time is of the essence
      * ***Emerging Issue and Question for the Audience –*** *will the trend we see in foreclosure substitution of purchaser contracts where you get in advance and escrow a release of the contract* ***(Relinquishments of Rights)*** *flow over to the area of commercial contracts?*
  + **Buyer Side** minimum additional contract checklist items
    - Deliverables – Seller docs
      * Rent roll
      * Budget
      * Income expense statements /operating budget
      * Equipment
      * Environmental
      * Survey
      * Title
        + *Covenants and Use in Common Agreements / Resitrictions*
      * *Off Site Easements necessary to operate the Property*
      * Development
      * Studies
      * appraisals
    - Study Period
      * Title…. Can be part of study or customarily a separate title section with an elaborate notice and cure period
        + No litigation or lis pendens
        + No mechanics lien notices or suits/ materials labor paid
      * Off-site easements needed to operate the property
        + SWM
        + Utilities
        + Parking and access
        + *Dumpster*
      * *Leases and Operating Budget*
      * Environmental
      * Use Permissions and Code Compliance
        + *Fire Code ADA*
        + *Sufficient water pressure*
      * Permits
      * *Signage*
      * *Appraisal*
      * *Financing*
    - Warranties of Seller
      * Environmental
      * Compliance with Laws and Regs
      * Zoning and Development Regs
      * Governmental notices or violations
      * All improvements per regulation and with permits
      * Condemnation
      * *Deliverables are true and correct*
        + *Rent roll*
        + *Leases*

*estoppels*

*snda*

* + - * + *Budget and income expense*
        + *Etc.*
      * *Survival of Reps and Warranties of Seller / title warranties merge into the deed / what about the rest? / does it matter if the seller is a special purpose entity?*
    - *Covenants (Promises) of Seller*
      * *Operate Property the same in a prudent manner to protect preserve the Property*
      * *No new leases or obligations or financings*
      * *Insurance maintained*
    - Conditions to Settlement
      * *Warranties and Covenants still true at settlement*
        + *Effect of Conditions clause…. Contract is not “hard” until closing*
      * Permits and Use Permissions in Place
      * Off site easements and permissions
      * Marketable title – or same as study period
      * Authority of Seller
      * No changes in rent roll or leases since study period
      * *No condemnation*
      * *No governmental notices*
      * *same condition as at contract date*
        + *Risk of casualty loss on Seller*

*Option to buy and accept insurance proceeds or back out of the deal*

* + - Breach by Seller
      * Specific Performance
      * Actual and Incidental Damages
      * Costs of Studies
    - *Transfer Tax*
      * *Transfer tax exemptions such as buying the special purpose entity (LLC)*
        + *Less commonly seen as a technique due to liability*
    - *Like Kind Exchange or Reverse Like Kind Exchange Addendum / IRC 1031*

**A SAMPLE CONTRACT**

**USE THE CHECKLIST OR KNOWLEDGE TO TELL US WHAT IS MISSING…..** Depending on which side of the deal you are on, there could be some serious issues with this sample contract, what are they?

**CONTRACT FOR PURCHASE**

**AND**

**SALE OF PROPERTY**

**THIS CONTRACT FOR PURCHASE AND SALE** (this "Agreement"), made as of this 1st day of December 2014, by and between Sample Road, LLC, a Maryland Limited Liability Company, (hereinafter referred to as "Seller") and BUYER, LLC, a Maryland Limited Liability Company, (hereinafter referred to as "Purchaser").

**STATEMENT OF INTENT.** Seller owns the property known as 1234 Sample Road, Baltimore County, MD, along with the appurtenances and all the estate and rights of Seller in and to the land and any buildings constructed thereon, and all fixtures and equipment attached or appurtenant to such buildings (the land, improvements and rights described in the foregoing are hereinafter referred to collectively as the "Property"), which Purchaser is interested in acquiring. The parties accordingly desire to make this Agreement whereby Seller agrees to sell and Purchaser agrees to purchase said Property for the price and subject to the terms and conditions set forth herein.

**NOW, THEREFORE,** in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Agreement for Purchase.

Seller hereby agrees to sell and Purchaser hereby agrees to purchase the Property in its "As -Is" condition at the price and on the terms hereinafter set forth.

2. Purchase Price.

The total purchase price for the Property shall be Five Hundred Thousand Dollars ($600,000.00) U.S. Funds payable by Purchaser as follows:A Ten Thousand Dollars ($10,000.00) deposit shall be held in escrow by the Purchaser’s Escrow or Title company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The balance shall be payable by Purchaser at Closing in the form of a certified or cashier's check, wired funds, or title company check.

3. Closing Date.

The sale and purchase of the Property (the "Closing") shall occur on or before January 25, 2015, at such time and at such location as the parties shall mutually agree. The Closing date may be modified to an earlier or later date by the mutual agreement of Seller and Purchaser.

1. Title.

Purchaser will cause the commitment for title insurance for the Property to be examined at least 30 days prior to Closing and shall notify Seller of any defects discovered in the title of the Property. Seller, in its sole discretion, may cure such defects at its own expense within thirty (30) days after receipt of Purchaser’s notice. In the event Seller elects not to cure any such defects within thirty (30) days (or such longer period as Purchaser may agree to in writing), Purchaser may (a) accept title with existing defects, or (b) rescind this Agreement and receive a refund of the Deposit. All monetary defects shall be paid by Seller at the time of Closing.

5. Conveyance.

On the Closing Date, upon payment of the unpaid purchase money, Seller agrees to execute and deliver a deed for the Property conveying to Purchaser good and marketable title free of liens and encumbrances except for the matters set forth in Purchaser’s title commitment and to which Purchaser makes no objection pursuant to Paragraph 4 above.

6. Closing Costs.

All rent, taxes, general or special, and all other public or governmental charges or assessments or utility charges against the Property which are payable on an annual or other basis (including assessments for water and sewer) shall be adjusted and apportioned as of the Closing Date. The costs of all recordation taxes, transfer taxes and documentary stamps imposed in connection with the recordation of the deed shall be divided and paid evenly between the Purchaser and Seller. All other settlement costs including, but not limited to, lien sheets, document preparation, title search, title insurance, and any fee imposed in connection with the recordation of a deed of trust or a mortgage in connection with Purchaser's financing shall be borne solely by Purchaser. Each party shall bear its own legal expenses incurred in connection with this Agreement and settlement hereunder.

7. Failure to Complete Closing.

Subject to the contingencies set forth in Paragraph 8, if for any reason other than the breach of this Agreement by Seller, Purchaser is unable or unwilling to take title to the Property on the Closing Date, this Agreement shall terminate and Seller shall be entitled to the Deposit, in addition to any and all other remedies available at law or in equity.

If Seller breaches this agreement, and the Property is not conveyed to Purchaser due solely to Seller’s failure to comply with the conditions of this contract, Purchaser shall be entitled to a refund of the Deposit, in addition to any and all other remedies available at law or in equity.

8. Contingencies.

Purchaser shall be entitled, at its option, to rescind this Agreement, to receive a full refund of the Deposit, and to be relieved of any further obligations under this Agreement in the event of any of the following contingencies:

(a) If at any time prior to the Closing Date all or a portion of the Property is acquired by authority of any governmental agency in the exercise of its power of eminent domain or by purchase in lieu thereof. Seller agrees not to solicit condemnation;

1. If any of the warranties and covenants set forth in Paragraph 9 are found to be materially untrue.

Upon receipt of such written notice of rescission from Purchaser to Seller and the payment of the Deposit as provided for herein, this Agreement shall terminate and there shall be no further liability hereunder on the part of either party. Notice of rescission shall be given by Purchaser in the manner specified in Paragraph 11.

9. Seller Covenants and Warranties.

The Seller covenants, represents and warrants and will as of the Closing Date, represent, warrant and covenant to Purchaser that:

(a) Seller owns good, marketable and insurable title to the Property and has the requisite authority to convey such title to Purchaser;

(b) Seller has not entered into and will not, while this Agreement is in effect, enter into any other agreement or contract of sale or execute or deliver any deeds affecting the Property, or otherwise convey or encumber the Property in any fashion without the prior written permission of the Purchaser;

(c) There is no litigation or proceeding pending or to Seller's knowledge threatened against the Property or against the Seller and relating to the Property;

(d) Seller has received no notice of taking, condemnation or assessment, actual or proposed, with respect to the Property; and

(e) Seller is not a "foreign person" within the meaning of the Internal Revenue Code, and agrees to execute an affidavit to this effect at the time of Closing.

10. Brokerage.

No brokerage fees to be paid by either party.

11. Notices.

All notices and communications hereunder, including change of address, shall be in writing and shall be deemed to have been duly given when personally delivered to the party to whom it is directed or, in lieu of personal delivery, on the second business day after same is deposited in the United States mail, postage prepaid, sent certified mail, return receipt requested addressed as follows:

(a) If to Seller to 1234 Sample Road, Anywhere, MD 21234

(b) If to Purchaser to: Nowhere Road, Towson, MD 21204

12. Addendum.

Attached to this Agreement and incorporated herein by reference, are the following Addendums:

None.

13. Miscellaneous.

(a) This Agreement contains the entire agreement among the parties. There are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, expressed or implied, among them, other than as herein set forth. This Agreement is intended by the parties hereto to be an integration of all prior contemporaneous promises, agreements, conditions, negotiations and undertakings between the parties hereto. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by all the parties hereto or their respective successors in interest.

(b) The paragraph headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. Wherever herein reference is made to "days" the same shall mean "calendar days" unless other indicated. **Time being of the essence in this Agreement.**

(c) If any term, covenant or condition of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law.

(d) It is the intention of the parties hereto that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of Maryland.(e) Purchaser has executed this Agreement first and then offered this Agreement for acceptance to the Seller. Accordingly, the terms "date of this Contract", "date of this Agreement" or the "date hereof", wherever used herein, shall mean the date on which this Agreement is fully executed and signed by the Seller, said date to be evidenced by Seller's insertion thereof in the space provided in the last page of this Agreement.

14. Inclusions.

(a) The following items are currently in or on the Property are included in the purchase price:

1. All existing appliances in as-is condition;

2. All built-in cabinets and desks in first floor office area.

15. Inspection.

The buyers shall have 15 days from the date of contract acceptance to conduct a termite inspection and inspection on the property.

1. Professional Disclosure.
2. Elvis Made Up Name, a member of the entity selling the property hereby discloses that he is a licensed real estate Associate Broker in the state of Maryland.

b. Dorothy Made Up Name, a member of the entity selling the property hereby discloses that she is a licensed real estate Salesperson in the state of Maryland.

17. Special Conditions.

a. Purchaser agrees to assume all currently existing leases at the time of settlement.

b. All Tenant Security Deposits on account with the Seller shall be transferred to the Purchaser.

b. All Tenant rental payments for the month in which settlement occurs shall be pro-rated on a daily rent and balance credited by Seller to Purchaser as of the date of closing.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the parties have executed this Agreement as of the day and year first above written.

**WITNESS: SELLER:**

Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Some of the Issues in the Foregoing Contract:**

(this is a test for the audience, but to get you started……..)

**Seller Side Issues…. The clauses are lacking**

-Attorney Fee Shifting Clause

This helps some with the issue of equitable title passing and not being able to get it back and go to settlement in case of a dispute – title company will treat it as an equitable conversion or lis pendens

**-Time being of the Essence -** note this was added in bold to the above contract at the last minute

-Jury Trial Waiver

-Equitable title has shifted and how do I protect myself as Seller?

-(ideas from the audience?)

**Buyer Side Issues**

**-**Specific Performance Clause

-Risk of Loss or what if the Property burns down?

**What is the Future in Contract drafting?**

**App on phone with Skype or FaceTime connection to attorney to walk you through a contract on the spot?**

**This is probably on the way now…**

{Begin with the end in mind, this is where the deal ends up, with a closing agenda, so be prepared and take a look at what the lenders want……………… so make sure it is covered in your contract}

Closing Agenda

**Agenda**

**Checklist**

**[Caption with Loan Identified and an as of date]**

**[include Names of the following including contact information:}**

Lender (L)

Lender’s counsel (LC)

Borrower\*

Guarantor

Borrower and Guarantor’s counsel (BGC)

Title Company (TC)

I. Loan and Security Documents Prepared and Submitted By Status

Commitment Letter L

Note LC

Deed of Trust LC

Ex A - Legal Description TC

Guaranty LC

Etc., etc., etc. LC

II. Pre-Closing Submissions

Phase One Environmental L

Lead Certificates B/BGC

Rental Registration B

Leases/ Rent Rolls B

Estoppel Certs/ SNDA LC/B

Draw Schedule Proposed B/ L

Appraisal L

Insurances B/ BGC counsel

Location Drawing/ Survey TC

Zoning Letter BC/ LC

Permits B/BC

Termite Report B

Flood Certificate L

Title Binder and Exceptions TC / LC

Endorsements TC / LC

Insured Closing Letter from TC TC

Judgment, Tax, Chattel (UCC) Searches TC

Entity Information and Docs B/ BC

Good Standing Certificate BC

Entity Resolution LC/ BC

Creditor’s Rights Certificate LC

III. Miscellaneous

Property Management Agreement B/BC

Deliverables related to Property’s Develop. B/BC

Contracts with Engineer

Plans Specs Approvals

Bonding

Assignment of Life Insurance B

[Anything else in Commitment Letter] B/BC /LC

IV. Closing

Closing Instruction Letter LC

Settlement Sheet TC

Settlement TC / LC

V. Post Closing

Signed Original Note to Lender TC

Recording Receipts TC

Loan Binder TC or LC

Ticklers L

**THE END**