**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**