

# **NAI Harmon Group**

4427 Talmadge Road, Toledo, Ohio 43623

This Purchase contract is between The City of Toledo ("Seller") whose address is One Government Center, Toledo Ohio 43604 and Louisville Title Agency for N.W. Ohio Inc., Trustee ("Purchaser") whose address is 626 Madison Avenue, Toledo, Ohio 43604. The date that Seller or Purchaser last signs and delivers a fully executed copy of this Agreement to the other, without change, is the Effective Date of this Agreement.

**SECTION 1. PURCHASE AND SALE; PROPERTY.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase and pay for, upon the terms and conditions contained in this Agreement, the following (the "Property"):

1.1. The property commonly known as 2000 and 2040 S Reynolds Road, Toledo Ohio 43614. TD 07 Parcels 71411, 71421, 71471.

1.2. All buildings, structures, fixtures and improvements on the land, if any, and all other rights, privileges and appurtenances owned by Seller and in any way related to, or used in connection with, the real estate described above; and

1.3. The following items of personal property located on or used in connection with the real estate: \_\_\_\_\_

**SECTION 2. PURCHASE PRICE.** The total purchase price for the Property shall be \$ 2,800,000.00, (the "Purchase Price"), which subject to the adjustments and proration provided for in this Agreement, shall be payable as follows:

2.1. The sum of \$ 10,000.00 shall be paid as earnest money deposit (the "Deposit") to The Louisville Title Agency ("Title Agency") upon full execution of the Agreement. The Deposit shall be held by Title Agency without interest in accordance with the terms set forth in this Agreement and either (a) credited to the Purchase price at the "Closing" (as hereinafter defined); (b) released to Seller if this Agreement is terminated by Seller due to Purchaser's default pursuant to Section 10.1; or (c) returned to Purchaser if this Agreement is terminated by Purchaser pursuant to the exercise of any right of termination provided to Purchaser in this Agreement (including, but not limited to, Seller's default or the failure of any condition).

2.2. The balance of the Purchase Price, subject to adjustments and proration shall be paid in full at the time of Closing by a certified or cashier's check or by wire transfer of federal funds.

**SECTION 3. INSPECTION AND CONTINGENCIES.**

3.1. The Purchaser's obligations under this Agreement are subject to the following contingency provisions which are selected to be applicable to this Agreement:

**Applicable** (Only the provisions marked "Yes" below shall become a part of this Agreement.)

- |   |                             |                                   |
|---|-----------------------------|-----------------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | - 3.1.1 Inspection Contingency    |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | - 3.1.2 Environmental Contingency |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | - 3.1.3 Verification of Zoning    |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | - 3.1.4 Change of Zoning          |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | - 3.1.5 Leases                    |
| <input type="checkbox"/> Yes            | <input type="checkbox"/> No | - 3.1.6 Assembly of Parcels       |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | - 3.1.7 Financing                 |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | - 3.1.8 Seller Information        |

3.1.1. Inspection Contingency. From and after the Effective Date for a period of 90 days (the "Inspection Contingency Period"), Purchaser shall approve and find acceptable, in Purchaser's sole discretion, the results of any inspections of the Property that Purchaser may cause, at Purchaser's sole cost, to be performed. If any inspection obtained by Purchaser discloses any problem in the Property or in the vicinity of the Property that is unacceptable to Purchaser in its sole discretion, then Purchaser may: (i) agree with Seller to a reduction in the Purchase Price; (ii) permit Seller at Seller's sole cost to remedy the problem to Purchaser's satisfaction within a

reasonable time period; or (iii) terminate this Agreement; provided, however, Seller shall not be obligated to remedy any problems reported by Purchaser. Absent Seller's actual receipt of written notice of the unacceptability of any such inspection prior to the expiration of the Inspection Contingency Period, this contingency shall be deemed waived and satisfied.

3.1.2. Environmental Contingency. From and after the Effective Date for a period of 90 days (the "Environmental Contingency Period") ☐ Seller shall provide Purchaser, at Seller's sole cost or ☒ Purchaser may obtain, at Purchaser's sole cost, a Phase I Environmental Site Assessment of the Property (the "Phase I") prepared for the express benefit of Purchaser and Purchaser's lender by an environmental consultant acceptable to Purchaser. The Phase I shall not be dated more than thirty (30) days prior to Seller's acceptance hereof. The Phase I shall be of sufficient scope and detail to satisfy Purchaser and Purchaser's lender that the Property is free and clear of all toxic substances, hazardous substances, hazardous waste, underground storage tanks and petroleum products. If the Phase I discloses any problem with the Property or in the vicinity of the Property that is unacceptable to Purchaser in its sole discretion, then Purchaser may: (i) agree with Seller to a reduction in the Purchase Price; (ii) permit Seller at Seller's sole cost to remedy the problem to Purchaser's satisfaction within a reasonable time period; or (iii) terminate this Agreement; provided, however, Seller shall not be obligated to remedy any problems reported by Purchaser. Absent Seller's actual receipt of written notice of the unacceptability of any such inspection prior to the expiration of the Environmental Contingency Period, this contingency shall be deemed waived and satisfied.

3.1.3. Verification of Zoning. From and after the Effective Date for a period of 90 days (the "Zoning Verification Contingency Period"), Purchaser shall have determined that the zoning classification of the Property permits, as of right, the use of the Property for its current use or any use intended by Purchaser. If the zoning classification of the Property does not permit the use of the Property for its current use or Purchaser's intended use, then this Agreement shall automatically terminate absent Seller's receipt of written notice from Purchaser of Purchaser's intent to waive the Zoning Verification Contingency Period.

3.1.4. Change of Zoning. From and after the Effective Date for the period prior to closing (the "Zoning Change Contingency Period"), the zoning classification of the Property shall have been changed by the appropriate legislative body from its existing zoning classification to CM, Mixed Use. Purchaser shall use reasonable efforts to obtain this zoning change. Seller shall execute all documents, provide all information and assistance and take all other actions that Purchaser may reasonably request in connection with the proceedings to change the zoning classification. Purchaser shall have the right to extend the Zoning Change Contingency Period for an additional six (6) months by providing Seller with written notice prior to the expiration of the original Zoning Change Contingency Period. If the Purchaser is unable to obtain the zoning change, then Purchaser may terminate this Agreement. Absent Seller's actual receipt of written notice that Purchaser was unable to obtain the zoning change prior to the expiration of the Zoning Change Contingency Period, this contingency shall be deemed waived and satisfied.

3.1.5. Leases. Within five (5) days of the Effective Date, Seller shall deliver complete copies of all leases affecting the Property (the "Leases") to Purchaser. Purchaser shall have 30 days after receipt of the Leases to review, approve and find acceptable the terms of the Leases in its sole discretion (the "Lease Review Contingency Period"). Absent Seller's actual receipt of written notice of the unacceptability of the terms of the Leases prior to the expiration of the Lease Review Contingency Period, this contingency shall be deemed waived and satisfied.

3.1.6. Assembly of Parcels. Within N/A days of acceptance (the "Assembly Period"), Purchaser shall have entered into an acceptable purchase agreement for the property known as \_\_\_\_\_

3.1.7. Financing. From and after the Effective Date for a period of 90 days (the "Financing Contingency Period"), Purchaser shall have obtained a commitment for a mortgage loan from a lending institution for a purchase money mortgage on terms and conditions acceptable to Purchaser. Purchaser shall apply for such mortgage loan within ten (10) days of acceptance and pursue such mortgage loan in good faith. Absent Seller's actual receipt of written notice of Purchaser's inability to secure such commitment for a mortgage loan prior to the expiration of the Financing Contingency Period, this contingency shall be deemed waived and satisfied.

3.1.8. Seller's Information. Within five (5) business days after the Effective Date, Seller shall provide to Purchaser copies of the following items relating to the Property if the same are in Seller's possession or in the possession of any agents or former agents of Seller (the "Seller Information"): (a) a copy of Seller's latest issued owner's policy and commitment of title insurance for the Property; (b) surveys of the Property; (c) ALTA

Purchaser's Initials \_\_\_\_\_ Seller's Initials \_\_\_\_\_  
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surveys; and (d) all environmental reports and all engineering reports. Purchaser shall have 45 days after receipt of the Seller Information to review, approve and find acceptable the Seller Information in its sole discretion (the "Seller Information Contingency Period"). Absent Seller's actual receipt of written notice of the unacceptability of the terms of the Seller Information prior to the expiration of the Seller Information Contingency Period, this contingency shall be deemed waived and satisfied.

3.2. Entry. Immediately upon the execution of this Agreement and continuing through the date of Closing, Seller shall make the Property available for inspection by Purchaser and Purchaser's agents, employees and contractors. Inspections shall be conducted during normal business hours. Seller shall be given advance notice of the times when inspectors will be present on the Property, and the opportunity to have a representative present during the inspections. Purchaser hereby indemnifies Seller and holds harmless Seller from all costs, claims, and/or damages arising out of or in connection with such access. All information and/or reports obtained by Purchaser concerning the Property shall be kept confidential and shall not be disclosed to third parties (other than Purchaser's attorneys, lenders and consultants) without Seller's consent. The provisions of this Section 3.2 shall survive the termination of this Agreement.

3.3. "As Is" Sale. Purchaser represents that upon completion of its inspections of the Property as contemplated under this Section 3, Purchaser will have fully inspected the Property, will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and character and suitability of the Property. In addition, Purchaser acknowledges that the Property is purchased and will be conveyed "as is" with all faults and defects, whether patent or latent, as of the date of closing. There have been no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Purchaser by Seller, any employee or agent of Seller, Broker, as defined herein, or any employee or agent of Broker, except as specifically set forth in this Agreement.

#### SECTION 4. TITLE AND SURVEY.

4.1. Title. Within 10 days after the Effective Date Seller shall furnish Purchaser a Commitment for a Title Insurance Policy along with legible copies of all exception documents (the "Commitment"). The Commitment shall be prepared and issued by **Louisville Title Agency of Northwest Ohio**. Seller shall pay for the costs of the title search/examination as well as the premium cost of the Owner's Policy of Title Insurance based upon the Purchase Price. All other title insurance costs and expenses will be paid by the Purchaser. The Commitment shall be continued to the date of Closing, shall bear a stated liability equal to the Purchase Price of the Property, and shall show record title to be marketable in the name of Seller, free and clear from material defects, liens and encumbrances, subject only to the following "Permitted Exceptions": (a) All legal highways; (b) Zoning, building and other laws, ordinances, codes and regulations; (c) Matters disclosed by the Survey pursuant to Section 4.2; (d) Easements, rights-of-way, conditions, covenants and restrictions acceptable to Purchaser, in Purchaser's reasonable discretion; and (e) Real estate taxes and assessments that are a lien upon the Property, but not yet due and payable. Any mortgage or other monetary liens on the Property ("Encumbrances") are to be discharged and paid by Seller at the time of Closing. At the Closing, and as a condition to Purchaser's obligations under this Agreement, the Title Company shall deliver to Purchaser a marked up policy of title insurance in accordance with the Commitment (the "Title Policy"). Seller shall provide a reasonable and customary affidavit as may be required by the Title Company to delete the "standard" or "general" exceptions from the Title Policy.

4.2. Defects and Cure. If the Commitment discloses matters other than the Permitted Exceptions and Encumbrances, Purchaser shall notify Seller of Purchaser's disapproval of any such matters contained in the Commitment ("Objections") no later than 10 days from Purchaser's receipt of the Commitment ("Title Review Period"). Except for Encumbrances, Purchaser's failure to notify seller of disapproval of any matter before the expiration of the Title Review Period shall be deemed approval of that matter. If Purchaser notifies Seller of the Objections in the manner set forth above, Seller may, but shall not be obligated to, proceed to cure or remove such objections at or prior to the Closing (except that Seller shall be obligated to remove any Encumbrances). If Seller fails to cure the Objections, Purchaser shall either (a) waive the Objections, in which case such Objections shall become Permitted Exceptions, or (b) terminate this Agreement, in which case the Deposit shall be returned to Purchaser and the parties shall be released from all further obligations under this Agreement.

4.3. Survey. Within 45 days of the Effective Date, ☒ Purchaser shall obtain ☐ Seller shall provide, at its expense, ☐ a boundary survey ☒ an ALTA survey and a legal description of the Property prepared by a registered land surveyor acceptable to Purchaser (the "Survey"). The legal description of the

**SECTION 5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.** Seller represents, warrants and covenants to Purchaser as to the following matters, and shall be deemed to remake all of the following representations, warranties and covenants as of the date of Closing:

5.2. To Seller's knowledge, no toxic, hazardous, explosive or otherwise dangerous materials, substances, pollutants, or wastes, as those terms are used in the Clean Air Act, the Clean Water Act, Resource Conservation and Recovery Act of 1976, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Emergency Planning and Community Right-to-Know Act or in any other federal, state or local law environmental law (collectively "Environmental Laws"), petroleum products, polychlorinated biphenyls, or mold in quantities for which remediation is appropriate, have been or are stored, treated, disposed of, managed, generated, manufactured, produced, released, emitted or discharged on, in or under the Property, in violation of any Environmental Law.

5.4. Seller has no knowledge of any pending or contemplated eminent domain, condemnation, or other governmental or quasi-governmental taking of any part or all of the Property.

5.6. The representations of Seller set forth in this Agreement shall survive the Closing.

6.1. Closing. The parties agree to consummate the transactions contemplated by this Agreement 30 days after the satisfaction or waiver of contingencies set forth Sections 4 and 5, above (or, if that date is not a business day, the first business day after that date), or such earlier date to which Seller and Purchaser may agree (the "Closing").

6.2.1. A general warranty deed to the Property conveying title to the Property to Purchaser in accordance with Section 4, subject, however, to the Permitted Exceptions.

6.2.3. An owner's affidavit, in form and substance reasonable satisfactory to Purchaser, signed under penalty of perjury and containing Seller's U.S. taxpayer identification number, to the effect that Seller is not a foreign person within the meaning of Section 1445(f) of the Internal Revenue Code.

Purchaser's Initials                      Seller's Initials                       
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6.2.5. Such other documents or instruments as Purchaser or the Title Company may reasonably request in order to consummate this transaction, including, but not limited to, a closing statement.

6.3. Purchaser's Documents. At closing, Purchaser shall execute and/or deliver to Seller the following documents:

6.3.1. Evidence of the power and authority of Purchaser, through the officer(s) acting on behalf of Purchaser, to enter into and perform this Agreement and the transactions contemplated by this Agreement; and;

6.3.2. Such documents and instruments as Seller or the Title Company may reasonably request in order to consummate this transaction, including, but not limited to, a closing statement.

**SECTION 7. POSSESSION.** Seller shall deliver possession of the Property to Purchaser at Closing subject to the rights of any tenants set forth in the Leases.

**SECTION 8. PRORATIONS AND EXPENSES.**

8.1. Proration of Real Estate Taxes and Assessments. Seller shall pay all real estate taxes and assessments with respect to the Property that become due and payable prior to the Closing. If the Property is located in Lucas County, real estate taxes and assessments, both general and special, shall be pro-rated in accordance with the "due and payable" method according to Lucas County Custom. If the Property is located outside Lucas County, real estate taxes and assessments, both general and special, shall be pro-rated in accordance with the ☒ due and payable method or ☐ lien method. If no method is specified, the proration shall be in accordance with the due and payable method. In the event that the taxes and assessments for the year of Closing are not yet determined, the proration shall be based upon the taxes and assessments paid in the prior year. The proration shall be final. If the Property or any part of the Property has been listed on the agricultural land list, Seller will pay to Purchaser or credit against the Purchase Price, at Closing, the estimated amount of the recoupment of real estate taxes in connection with the conversion of the Property from agricultural land to a non-agricultural use.

8.2. Other Expenses. Seller shall pay (a) any transfer tax, conveyance fee or similar charge in connection with the sale of the Property, and (b) one-half of any escrow and closing fees of the Title Company. Purchaser shall pay (c) all costs, fees and premiums (including, but not limited to, title examination charges) to obtain the Commitment and Title Policy, (d) recording charges relating to Seller's deed, and (e) one-half of any escrow and closing fees of the Title Company. Purchaser also shall pay for any appraisal, recording, and other costs of financing. The party designated in Sections 3.1.2 and 4.2 shall pay the cost of the Phase I, Survey and legal description, respectively. Each party shall pay its own attorney's fees. The parties will prorate, as of the date of Closing, any miscellaneous income and expenses related to the Property.

8.3. Utilities. Seller shall be responsible for any and all charges for water/sewer, electrical and natural gas to the Property.

**SECTION 9. CONDEMNATION.** In the event that, prior to the Closing, Seller received a written notice from any governmental or quasi-governmental authority with powers of eminent domain to the effect that a condemnation as to any portion or all of the Property is pending or contemplated, Seller shall notify Purchaser promptly after receipt of the notice. If the proposed condemnation affects a material portion of the Property, in Purchaser's judgment, Purchaser may, within ten (10) days after receipt of notice of the event, terminate this Agreement, in which event the Deposit shall be returned to the Purchaser, and neither party shall have any further rights or obligations under this Agreement. In the event that Purchaser shall not elect to terminate this Agreement, or if the condemnation does not affect a material portion of the Property as described above, then this Agreement shall remain in full force and effect, and Seller shall be entitled to all monies received or collected prior to the Closing by reason of the condemnation. Purchaser has the right to approve the amount of any negotiated condemnation award. In that event, this transaction shall close in accordance with the terms and conditions of the Agreement except that there will be an abatement of the Purchase Price equal to the amount of the gross proceeds received by Seller. If, however, Seller has not received any proceeds by reason of such condemnation prior to the Closing and Purchaser has not exercised its right to terminate Purchaser's obligations under this Agreement, then the Closing shall take place without abatement of the Purchase Price, and Seller shall assign and transfer to Purchaser at Closing, by written instrument reasonably satisfactory to the parties, all of Seller's right, title and interest in any condemnation awards.

**SECTION 10. DEFAULT.**

10.1. Purchaser's Default. If Seller is ready, willing and able to convey the Property in accordance with this Agreement, and Purchaser is obligated under the terms of this Agreement to consummate the transaction but fails to do so, the parties recognize and agree that the damages Seller will sustain will be substantial, but difficult if not impossible to readily ascertain. Therefore, the parties agree that Seller shall be entitled to receive and retain the Deposit as liquidated damages in the event of Purchaser's default. Seller's right to the Deposit shall constitute a waiver by Seller of all other rights and remedies against Purchaser except for those rights and/or obligations that are expressly stated to survive the termination of this Agreement.

10.2. Seller's Default. If Purchaser is ready, willing and able to acquire the Property in accordance with this Agreement, and Seller is obligated under the terms of this Agreement to consummate the transaction but fails to do so, Purchaser shall be entitled to (a) enforce the terms of this Agreement through an action for specific performance, in which event Seller shall be liable for Purchaser's costs of enforcement but not for other consequential damages, or (b) terminate this Agreement by notice to Seller, in which event Seller shall not be liable to Purchaser for damages except to the extent of Purchaser's actual out-of-pocket expenses incurred in connection with this transaction. In either of these events, Purchaser shall be entitled to an immediate refund of the Deposit after notice to Seller and to Broker. In the event of a successful specific performance action by Purchaser, the full Purchase Price shall be paid to Seller at the time of Closing.

**SECTION 11. BROKER.** Each party represents and warrants to the other that it has dealt with no agent or broker who has in any way participated in the sale of the Property except for NAI Harmon Group, whose fee shall be paid by the Seller. Seller agrees to pay NAI Harmon Group for professional realty services a fee of ten percent (10%), of the gross Purchase Price (the "Sale Commission"). Notwithstanding anything else contained herein, the Sale Commission shall be paid in full at the time of Closing.

**SECTION 12. ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representative, successors and assigns.

**SECTION 13. NOTICES.** All notices permitted or required pursuant to this Agreement shall be in writing, and shall be deemed properly delivered when (a) hand delivered or sent via electronic mail or facsimile with confirmation of receipt, (b) deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (c) sent by a nationally recognized overnight courier service, addressed to the parties at their respective addresses set forth in the first paragraph of this Agreement or as they may otherwise specify by written notice delivered in accordance with this Section.

**SECTION 14. MISCELLANEOUS.**

14.1. Construction of Terms and Headings. Words used in this Agreement shall be held and construed to include the masculine or feminine gender and the singular or plural as the context requires. The captions or headings in this Agreement are for convenience only and are not intended to define, limit or prescribe the scope or effect of any part or provision of this Agreement.

14.2. Construction. No provisions of this Agreement shall be construed by any court or other judicial authority against any part by reason of that party's being deemed to have drafted or structured the provisions.

14.3. Entire Agreement. This Agreement constitutes the entire contract between the parties and supersedes all prior understandings, if any, there being no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution of the Agreement and none have been relied upon by either party. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties.

14.4. Recording. The parties agree that this Agreement shall not be recorded.

14.5. Counterparts. This Agreement may be executed by the parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement.

14.6. Offer and Acceptance. This offer has been executed first by Purchaser and shall remain open for acceptance by Seller until May 24, 2016, at 6:00 p.m.; otherwise this offer shall be deemed revoked without further action by Purchaser.


14.7. Time is of the Essence. Time is of the essence of this Agreement.

Signed, as of the day and year first above written.

SELLER:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PURCHASER:

By:   
Name: James M. Lindsay  
Title: President  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, LEGAL COUNSEL SHOULD BE SOUGHT.**