

REAL ESTATE PURCHASE CONTRACT

The undersigned Buyer agrees to buy, and the undersigned Seller agrees to sell, upon the terms hereinafter set forth in this Real Estate Purchase Contract (this “Contract”), the parcels of real property located at 5431 Hudson Drive, Hudson, Ohio 44236, known as Parcel Nos. 30-01315 and 30-01316 in Summit County, Ohio, containing approximately 31 acres, and any and all improvements located thereon (the “Property”), as described more particularly on Exhibit “A,” attached hereto and made a part hereof. As used herein, the “Effective Date” shall mean the last date of signature to this Contract below.

1. **Purchase Price.** The Purchase Price shall be One Million Nine Hundred Thousand Dollars (\$1,900,000.00), payable in cash or other immediately available funds at Closing (as defined in Paragraph 4).

2. **Initial Disclosures.** Intentionally Omitted.

3. **Contingencies.** Buyer’s obligation to purchase the Property and Seller’s obligation to sell the Property is subject to the satisfaction or waiver of the conditions and contingencies described herein (the “Contingencies”) within seventy-five (75) calendar days following the Effective Date (the “Contingency Period”).

(a) **Title.** Within thirty (30) calendar days of the Effective Date, Buyer shall obtain, at Buyer’s expense, a commitment for an owner’s policy of title insurance issued by a title insurance company selected by Buyer (the “Title Company”) with respect to the Property (the “Title Commitment”). The Title Commitment shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (i) those created by Buyer; (ii) those specifically set forth in this Contract; (iii) zoning ordinances; (iv) legal highways; and (v) covenants, restrictions, conditions, and easements of record which do not interfere with or restrict the use of the Property contemplated by Buyer. If title to all or part of the Property is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association’s Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions, or encroachments other than those excepted by this Contract, Buyer shall have the right to object to such conditions within thirty (30) calendar days of Buyer’s receipt of the Title Commitment. If Buyer so objects, Seller may elect to cure any such objections, but is under no obligation to do so. If Seller fails to remedy or remove any such defect, lien, encumbrance, easement, condition, restriction, or encroachment, or obtain title insurance without exception therefor within the Contingency Period, Buyer shall (i) have the option to terminate this Contract by delivering written notice thereof to Seller, *and*, (ii) neither party will have any further liabilities or obligations hereunder thereafter. Buyer’s election to terminate this Contract is exercisable by Buyer giving written notice to Seller within five (5) days following expiration of the Contingency Period. If Buyer does not timely terminate this Contract, Buyer will be deemed to have elected to accept title to the Property subject to all items set forth in the Title Commitment. At Closing, Seller and each of its partners shall sign an affidavit with respect to off-record title matters as required by the Title Company and Buyer. The issuance of a title insurance policy pursuant to the Title Commitment (the “Title Policy”) is a condition precedent to the parties’ obligation to proceed to Closing under this Contract. The Title Policy shall be in a form reasonably acceptable to Buyer and in the amount of the Purchase Price, showing title to the Property vested of record in Buyer in fee simple, subject only to any matters approved or waived by Buyer, any matters shown on the Survey and not objected to by Buyer and any other matters that Buyer has approved in writing.

(b) **Survey.** Within thirty (30) calendar days of the Effective Date, Buyer shall have the right to obtain, at Buyer’s cost and expense, a survey of the Property, together with certification of the surveyor as may reasonably be required by Buyer (the “Survey”). The Survey shall satisfy, if required by Buyer, the most recent “Minimum Standard Requirements for ALTA/ACSM Land Title Surveys,” jointly established and adopted by ALTA and ACSM, and shall meet the accuracy requirements of a Class A Survey as defined therein. If the Survey reveals any exceptions to title or any matters affecting the Property (“Survey Exceptions”), Buyer may notify Seller of such Survey Exceptions within thirty (30) calendar days after Buyer’s receipt of the last of the Title Commitment or Survey (the “Survey Notice”), whereupon Seller may elect to cure any disapproved Survey Exceptions but is under no obligation to do so. If Seller fails to cure any Survey Exceptions referenced in the Survey Notice within the Contingency Period, Buyer shall (i) have the option to terminate this Contract by delivering written notice thereof to Seller within five (5) days following expiration of the Contingency Period, *and*, (ii) neither party will have any further liabilities or obligations hereunder thereafter. If Buyer does not timely terminate this Contract, Buyer will be deemed to have elected to accept title to the Property subject to all items set forth in the Survey.

(c) **Environmental Conditions.** Buyer shall have the right, and Seller shall provide Buyer access to the Property as reasonably necessary throughout the Contingency Period, to obtain environmental reports regarding the soils, ground water, topography, geology, and other conditions of the Property, together with reliance letters of the preparers of such reports as may be required by Buyer (“Environmental Reports”). If the Environmental Reports reveal any environmental matters adversely affecting the Property (the “Environmental Conditions”), Buyer may notify Seller of such Environmental Conditions (the “Environmental Notice”). Upon receipt of an Environmental Notice, Seller shall have the right, but not the obligation to, cure any disapproved Environmental Conditions. If the Environmental Condition is not cured to Buyer’s reasonable satisfaction within the Contingency Period, Buyer shall (i) have the option to terminate this Contract by delivering written notice thereof to Seller within five (5) days following expiration of the Contingency Period, *and*, (ii) neither party will have any further liabilities or obligations hereunder.

(d) **Inspections.** Seller shall cooperate in making the Property reasonably available for inspection by Buyer. For the avoidance of doubt, Buyer may, at its sole cost, conduct all inspections, searches, surveys, studies and/or tests, including soil samples, a Phase One, and/or a Phase Two, concerning the Property that it in its sole discretion deems necessary. These rights include the ability to inspect the Property to assess and determine its suitability and/or whether there are any structural, geological deficiencies, health or environmental concerns, any unsafe conditions or other damage, including the presence of radon gas, any lead-based paint hazards, flooding, and inspections for other conditions that are customary and/or that are required by law. If Buyer is not, in good faith, satisfied with the condition of the Property as disclosed by any inspection thereof, Buyer may deliver to Seller a written request that the Seller remedy any unsatisfactory conditions. If Buyer and Seller do not reach agreement regarding remedying the unsatisfactory conditions prior to the expiration of the Contingency Period, then Buyer shall (i) have the option to terminate this Contract by delivering written notice thereof to Seller within five (5) days following expiration of the Contingency Period, *and*, (ii) neither party will have any further liabilities or obligations hereunder.

(e) **Easements; Access Rights.** Buyer and Seller shall cooperate to secure all easements, rights of way, consents, amendments, variances, permits and or approvals from third parties as are necessary to permit Buyer to have ingress and egress to and full use and enjoyment of the Property in the manner and for the purposes contemplated by Buyer. Seller has no obligation to expend funds to obtain any such easements, rights of way, consents, amendments, variances, permits and or approvals from third parties.

4. **Closing.** The closing of the purchase and sale of the Property (the “Closing”) shall take place within twelve (12) business days following either the satisfaction of or Buyer’s written waiver of the contingencies herein. The foregoing twelve (12) business day requirement may be extended five (5) additional business days unilaterally by Buyer in its sole discretion and otherwise by a written agreement signed by Seller and the Hudson City Manager or his designee. In addition to the satisfaction or waiver of the Contingencies, Buyer’s obligations under this Contract are subject to and contingent upon the occurrence of the following before the date of Closing: (a) all of Seller’s representations and warranties hereunder shall remain true and correct; (b) no moratorium, statute, order, regulation, ordinance or judgment of any court or governmental agency shall have been enacted, adopted, issued or initiated that would materially and adversely affect the Property or Buyer’s use thereof as contemplated herein; and, (c) the parties shall have delivered all other documents and other deliveries listed in Paragraph 5 hereof.

5. **Deliveries.**

(a) **Seller’s Deliveries at Closing.** At Closing, Seller shall deliver the following documents and materials, all of which shall be in form and substance reasonably acceptable to the parties: (i) a duly executed and acknowledged general warranty deed (the “Deed”); (ii) a certificate duly executed by Seller that as of the date of Closing all representations and warranties by Seller set forth in this Contract remain true and correct; (iii) a certification duly executed by Seller, certifying that Seller is not a “foreign person,” pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended (“Section 1445”); (iv) a general instrument of transfer, pursuant to which Seller shall convey and assign to Buyer all of Seller’s right, title and interest in and to all personal property and other rights of Seller relating to the Property (“General Instrument of Transfer”); (v) such affidavits and indemnities as the Title Company may reasonably require in order to omit from the Title Policy all exceptions for (1) parties in possession, (2) mechanic’s liens, (3) unrecorded assessments and other matters an accurate survey of the Property would disclose, and (4) nondelinquent real estate taxes, water and sewer and other charges of municipal and governmental authorities and utility companies; and (vi) a signed closing statement showing documents, closing costs and prorations, calculated in accordance with Paragraphs 5 and 7 hereof, in form and substance reasonably satisfactory to Buyer and Seller (the “Closing Statement”).

(b) **Buyer's Deliveries at Closing.** On the date of Closing, Buyer shall: (i) deliver at the Closing the Purchase Price for the Property (plus any additional funds necessary to pay Buyers' share of closing costs and prorations, minus any credits granted to Buyer as set forth herein) in immediately available funds; and, (ii) sign the Closing Statement.

6. **Exclusivity.** Throughout the term of this Contract, Seller agrees that it shall not initiate, enter, or otherwise participate in any negotiations, discussions, agreements, or understandings for the purpose of selling or exchanging the Property to any other person or entity other than Buyer unless Buyer and Seller agree in writing to abandon this Contract.

7. **Closing Costs and Prorations.** At the Closing, closing costs shall be paid and prorations made as follows:

(a) **Closing Costs.** Except as otherwise expressly provided herein, Seller shall pay at the Closing: the costs of releasing any mortgage, financing statement, or other debt security, or any attachments, assessments, delinquent real estate taxes or mechanic's or materialmen's liens outstanding against the Property, all transfer taxes and conveyance fees and the costs of curing, remedying, or removing any Contingencies that Seller cures, remedies or removes. The costs of the Title Policy and the costs of the Survey shall be paid in accordance with Paragraph 3 of this Contract. Buyer shall pay the costs of recording the Deed and any mortgage or financing instrument and any special endorsements to the Title Policy not required to cure a title objection or Survey Exception. **Buyer and Seller along with Seller's individual partners shall be responsible for their own legal and realtor fees.**

(b) **Taxes.** All real property taxes and assessments ("Taxes") (including penalties thereon) which are delinquent shall be paid at Closing out of funds due Seller. Any non-delinquent Taxes shall be prorated on an accrual basis based on, if not yet fully determined as of the Closing, the most recently available tax bill giving effect to applicable exemptions, recently voted millage, change in valuation and other factors affected the Taxes. Such proration will be final as between Buyer and Seller.

(c) **Escrow.** The parties agree that an escrow agent, selected by Buyer, shall be utilized to receive and distribute all funds and documents and to otherwise manage the Closing. All funds and documents required hereunder shall be deposited in escrow, with the escrow agent, within five (5) business days before the Closing, unless otherwise approved in writing by the party without the obligation on such funds or documents.

8. **Damage or destruction of property.** Risk of loss to the real estate and appurtenances shall be borne by Seller until Closing provided that if certain Property covered by this Contract shall be substantially damaged or destroyed before this transaction is closed, Buyer may (a) proceed with the transaction and be entitled to all insurance money, if any, payable to Seller under all policies covering the Property, or (b) rescind the Contract and thereby release all parties from liability hereunder, by giving written notice to Seller within ten (10) calendar days after Buyer has written notice of such damage or destruction. Failure by Buyer to so notify Seller shall constitute an election to proceed with the transaction.

9. **Income-producing agreements.** Seller and its named partners shall convey all interest in leases or income-producing agreements relative to the Property that may be in effect as of the date of Closing, including any oil and gas leases and/or rental agreements, and will execute such assignments or other instruments as necessary to effectuate such conveyances.

10. **Seller's Representations and Warranties.** As a condition precedent, material inducement to the execution and delivery of this Contract by Buyer, and the performance by Buyer of its duties and obligations hereunder, Seller and the named signatories below do hereby warrant and represent to Buyer as of the Effective Date and as of the date of Closing:

(a) **Information.** Except as set forth herein and already disclosed to Buyer in writing, Seller and its named partners have no knowledge of any information affecting the Property that has or would have a material adverse impact on Buyer's ability to use, lease and operate the Property as generally contemplated by Buyer.

(b) **Legal Compliance.** Except as already disclosed to Buyer in writing, Seller and its named partners have no knowledge of any past or continuing violation or alleged violation of any legal requirement affecting the Property, including, without limitation, any past or continuing violation or alleged violation of any local, state, or federal environmental, zoning, subdivision, fire or other law, ordinance, code, regulation, rule, or order.

(c) **Litigation.** Seller and its named partners have no knowledge of any pending or threatened claims, actions, suits, litigation, or governmental proceeding affecting the Property.

(d) **Other Interests or Agreements.** Except as otherwise provided herein, Seller is the only party with an ownership interest and, to Seller's knowledge, there are no potential disputes between, claims by or agreements or understandings, oral or written, with any person, entity, the owners and/or officers of Seller, or governmental authority affecting the Property which could give rise to claims affecting the Property. For the avoidance of doubt, Seller and its named partners represent that, as of the Effective Date, it nor any of its partners have any agreement or are under any legal obligation for in relation to the Property, including realtor's fees.

(e) **Governmental Actions.** Seller and its named partners have no knowledge of any threatened or pending condemnation or eminent domain proceeding, special assessment, rezoning, or moratorium affecting the Property.

(f) **Due Authorization.** Seller and its named partners have full power to execute, deliver and carry out the terms and provisions of this Contract and have taken all necessary action to authorize the execution, delivery, and performance of this Contract. The individuals executing this Contract on behalf of Seller and themselves have the authority to bind Seller and themselves to the terms and conditions of this Contract.

(g) **Environmental Matters.** To the best of Seller and its named partners' knowledge, the Property is not in violation of any Environmental Law (as defined below) and Seller and its named partners have no knowledge of (i) the presence on or about the Property of any Hazardous Materials (as defined below); (ii) any release or threatened release of any Hazardous Materials on or affecting the Property; or (iii) the existence of any underground storage tanks on or about the Property. Seller and its named partners have not received any notice of any investigation or proceeding by any governmental agency concerning the presence or alleged presence, release or threatened release of Hazardous Materials on the Property. The term "Environmental Law" includes any federal, state or local law, ordinance or regulation pertaining to health, industrial hygiene, waste disposal, or the environment, including, without limitation: the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Superfund Amendments and Reauthorization Act of 1986, the federal Resource Conservation and Recovery Act of 1976, the federal Clean Air Act, the federal Water Pollution Control Act and federal Clean Air Act of 1977, the federal Insecticide, Fungicide and Rodenticide Act, the federal Pesticide Act of 1977, the federal Toxic Substances Control Act, the federal Safe Drinking Water Act, the federal Hazardous Materials Transportation Act, and any amendments thereto and regulations adopted, and publications promulgated pursuant thereto. The term "Hazardous Materials" includes oil and petroleum products, asbestos, polychlorinated biphenyl, radon and urea formaldehyde, and any other materials classified as hazardous or toxic or as pollutants or contaminants under any Environmental Law. Further, if Seller and/or any of its named partners have received or at any time does receive notice, knowledge, or information as to the presence, alleged presence, release or threatened release of Hazardous Materials on or about the Property other than as previously disclosed by Seller to Buyer, Seller and its named partners agree to provide to Buyer all information and data as to such Hazardous Materials immediately upon receipt of same.

(h) **Hold Harmless.** In the event it is discovered after Closing that the foregoing representations and/or warranties are materially false or erroneous in any way, Seller, its named partners and the named signatories below shall defend, indemnify, and hold Buyer harmless from any claim, liability, loss, or expense (including costs and reasonable attorneys' fees, which attorneys may be selected by Seller in its sole discretion).

11. Miscellaneous.

(a) This Contract shall be binding upon the parties hereto, the signatories below, and all respective successors and/or assignees. All agreements, representations and warranties by the respective parties and signatories contained herein are intended to and shall remain true and correct as of the Closing, shall be deemed to be material, and shall survive the delivery of the Deed and transfer of title. Any covenants and conditions herein that must be operative after delivery of the Deed to be effective shall be so operative and shall not be deemed to have been merged in the Deed.

(b) This Contract contains all the covenants, conditions, and agreements between the parties and signatories with respect to the subject matter hereof and shall supersede all prior correspondence, agreements, and understandings, both oral and written to the extent related to the subject matter hereof. The parties and the signatories intend that this Contract constitutes the complete

and exclusive statement of its terms and that no extrinsic evidence may be introduced in any proceeding involving this Contract.

(c) This Contract may not be changed or amended orally, but only by an agreement in writing by duly authorized representatives of both Seller and Buyer. No waiver shall be effective hereunder unless expressly given in writing, and waiver shall not be inferred from any conduct of either party.

(d) All notices required or permitted to be given pursuant to the terms hereof shall be in writing and shall be delivered either by hand delivery, by overnight (courier/package) delivery service, or by deposit in the United States mail, being certified mail, postage prepaid. All such notices shall be addressed to the applicable party at its address set forth on the signature page hereof. The foregoing addresses may be changed by written notice to the other party as provided herein. Notices shall be deemed received upon delivery if delivered by hand or by overnight (courier/package) delivery service, or three (3) business days after being sent by registered or certified mail (unless a signed receipt evidences earlier delivery).

(e) In construing this Contract, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Contract. Whenever required by the context, the singular shall include the plural and the masculine shall include the feminine and vice versa.

(f) All exhibits attached hereto are incorporated in this Contract by reference thereto.

(g) Time is of the essence of every provision herein contained. Whenever the date or deadline for any action to be taken is not a business day, the relevant date or deadline shall be the next business day.

(h) This Contract shall be governed by the laws of the State of Ohio. Jurisdiction and the exclusive venue for any claim arising out of this Contract shall be made in the state courts situated in Summit County, Ohio. The parties and each of the signatories expressly submit to such jurisdiction and venue and otherwise waive any objection to venue or any claim of forum non conveniens.

(i) The parties each represent to the other that no broker or agent was involved in this transaction. Seller hereby agrees to defend, indemnify and hold Buyer harmless from and against any and all loss, cost, damage or expense (including reasonable attorneys' fees) arising out of or resulting from the claim of any broker or agent in connection with this transaction, which claim is based upon any action or failure to act on the part of Seller. This defense and indemnification provision shall survive expiration or termination of this Agreement and be continuing thereafter.

(j) If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws, such provisions shall be fully severable; this Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Contract; and the remaining provisions of this Contract shall remain in full force and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Contract. In lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a provision similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, or enforceable.

(k) This Contract may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same document. Any counterpart may be signed electronically and/or delivered to the other party by facsimile, telecopier, or electronic mail attachment, and such counterpart shall be deemed an original and duly delivered as the case may be.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Real Estate Purchase Contract to be executed by their respective duly authorized representatives as of the last dated signature set forth below.

SELLER:

BUYER:

**HUDSON DRIVE REALTY, AN OHIO
PARTNERSHIP**

**CITY OF HUDSON, OHIO, AN OHIO
MUNICIPALITY**

By: _____
Anita Heller, Partner

By: _____
Thomas J. Sheridan, City Manager

Date: _____

Date: _____

and

Approved only as to form:

Nate’s Kids LLC, Partner

John P. Kolesar, City Solicitor

By: _____
Mark Leventhal, Authorized Agent

Date: _____

and

By: _____
Fredda Pollack aka Fredda Leventhal, Partner

Date: _____

Further agreeing, as to Seller’s representations and warranties, *and*, Paragraphs 7(a), 9, 10(a) - (h), and, 11(a), (b), (h), and (i), the signatories below have caused this Real Estate Purchase Contract to be executed and hereby agree and so commit as of the last dated signature set forth below:

Anita Heller

By: _____
Anita Heller, Individually

Date: _____

William Heller

By: _____
William Heller, Individually

Date: _____

Fredda Pollack aka Fredda Leventhal

By: _____
Fredda Pollack aka Fredda Leventhal, Individually

Date: _____

Seller’s Address:

23661 Chargin Blvd., Suite 200
Beachwood, Ohio 44122

Buyer’s Address:

1140 Terex Road
Hudson, Ohio 44236

Exhibit A

Parcel One:

Situated in the Township of Hudson, County of Summit and State of Ohio, and known as being part of Lot 15 in Hudson Township, and further described: Starting at the intersection of the South Line of Lot 15 with the centerline to the Hudson Drive, County Highway #34, thence North 24 degrees 55' East 226.71 feet along the said centerline to the P. C. of a curve; thence Northeasterly 277.34 feet along the arc of said 1 degree 15' curve to the Grantor's Southwest corner and the true place of beginning of the following described parcel; thence 408 feet along the arc of said curve, having a central angle 5 degrees 06' radius 4583.31 feet and a chord North 31 degrees 02' East 407.83 feet to the P. T.; thence North 33 degrees 35' East 217.80 feet along the said center line; thence North 89 degrees 38' 48" East 504.31 feet along the Grantor's North line to an iron pin; thence North 88 degrees 33' 15" East 633.11 feet to an iron pin at the Grantor's Northeast corner; thence South 1 degree 58' 45" East about 516.29 feet to an iron pin at the Grantor's Southeast corner; thence south 88 degrees 40' 28" West about 1484.40 feet along the Grantor's South line to the true place of beginning and containing 17.93 acres of land, be the same more or less, but subject to all legal highways.

Parcel Two:

Situated in the Township of Hudson, County of Summit and State of Ohio, and being part of Lot 15 in said Township, more fully described as follows: Beginning at a point where the South Line of Lot 15 intersects the center line of the Cuyahoga Falls-Hudson Road (Route #34); thence along the center line of said road North 24 degrees 55' East 226.71 feet to the P. C. of a curve in said Road; thence along the arc of a 1 degree 15' curve bearing to the right, the chord of which bears North 25 degrees 13' East a distance of 23.29 feet to the N. W. corner of a parcel of land now owned by H. Kuchenbecker the deed of which is recorded in Volume 2297, Page 187 of Summit County Records, said point being also the true place of beginning; thence along Kuchenbecker's North line North 88 degrees 50' East 209.35 feet to the N. E. corner of said parcel; thence along Kuchenbecker's East line South 1 degree 19' 38" East 224.18 feet to the S. E. corner of above-mentioned parcel; thence along the South line of Lot 15 North 88 degrees 50' East 1394.32 feet to the S. W. corner of J. & M. Comeriato's 1.84 acre parcel; thence along the West line of Comeriato and of the 13.88 acre parcel of E. C. & M. F. Buskirk North 1 degree 18' West 419.08 feet to a point; thence South 813 degrees 50' West 1484.40 feet to a point in the center line of the Cuyahoga Falls-Hudson Road on the arc of a 1 degree 15' curve; thence along the arc of said curve bearing to the left, the chord bears South 26 degrees 43' 25" West 254.01 feet to the place of beginning. Containing 15.22 acres more or less as surveyed by E.A. Hand in March 1950, be the same more or less, but subject to all legal highways.