

**LAND INSTALLMENT CONTRACT**

**THIS LAND INSTALLMENT CONTRACT** (hereinafter referred to as "Agreement") made and entered into at Painesville, Ohio as of the \_\_\_ day of March, 2011 ("Execution Date") by and between \_\_\_\_\_, an unmarried individual (herein referred to as "Purchaser") and \_\_\_\_\_, **LLC, an Ohio limited liability company,** (hereinafter referred to as "Seller").

**WITNESSETH**

**WHEREAS**, Seller desires to sell, transfer, set over and assign to Purchaser all of its right, title and interest in and to the Premises as that term is hereinafter defined, and Purchaser desires to acquire the Premises from Seller all subject to and upon the terms and conditions hereinafter set forth.

**NOW THEREFORE**, in and for good and valuable consideration, the receipt and sufficiency whereof being hereby mutually acknowledged, and in and for the covenants and agreements hereinafter set forth, the parties hereto do hereby represent, warrant, covenant and agree as follows:

1. Purchase - Sale. Subject to and in accordance with the terms and provisions set forth in this Agreement, Seller shall and does hereby sell, transfer, assign and convey unto Purchaser all of Seller's right, title and interest in and to the Premises for the total purchase price of \_\_\_\_\_ AND .00/100 DOLLARS (\$\_\_\_\_\_) ("Purchase Price"). Purchaser hereby agrees to purchase, subject to and upon the terms and conditions set forth in this Agreement, the Premises for the Purchase Price, which shall be due and payable to Seller as set forth and provided in Section 3 of this Agreement.

2. Definition of Premises. Purchaser and Seller hereby agree that the term "Premises" as used in this Agreement shall mean and include the parcel of land described in Exhibit "A" attached hereto and made a part hereof and further described as Permanent Parcel No.

\_\_\_\_\_, commonly known as \_\_\_\_\_, Ohio 44\_\_\_\_, together with all appurtenant easements, privileges and rights; the buildings constructed upon the land and all improvements therein, including but without limitation, all electrical, heating and plumbing apparatus, if any, distribution lines, equipment and systems as and to the extent the same are now situated within said buildings.

3. Purchase Price. The total Purchase Price in the sum of \_\_\_\_\_ .00/100 Dollars (\$\_\_\_\_\_) shall be paid by Purchaser to Seller at the time and in the manner hereinafter set forth.

(a) The Purchase Price in the sum of \_\_\_\_\_ and .00/100 DOLLARS (\$\_\_\_\_\_) shall be paid by Purchaser to Seller with interest monthly in arrears at the rate of six percent (6%) per annum from the Execution Date on a twenty (20) year amortization schedule of consecutive equal monthly installments in the sum of \$\_\_\_\_\_, with the first such installment being due and payable on or before May 1, 2011, and with like installments being due on the first day of each month thereafter as per the loan amortization schedule attached hereto marked as Exhibit "B" and made a part hereof, except that notwithstanding the foregoing, the entire remaining balance of principal and interest due shall, if not sooner paid, be paid in full on or before April 1, 2031. The foregoing obligation shall be evidenced by a Promissory Note ("Note") that has been executed by Purchaser and delivered to Seller simultaneously herewith.

(b) Purchaser shall have the right to prepay all or any portion of the balance of the Purchase Price without penalty, provided that in the event of the prepayment of less than all of the balance of the Purchase Price, such partial prepayment shall not operate to reduce the amount of the subsequently due monthly installment payments until such time as said balance has been paid in full.

4. Warranties of Seller. Seller represents and warrants to Purchaser the following, all of which shall be true, accurate, correct and complete as of the date of this Agreement and as of the Closing Date:

(a) That Seller is the owner in fee simple to the Premises free and clear of all liens, charges and encumbrances whatsoever except the conditions, easements and restrictions of record, a first mortgage in favor of \_\_\_\_\_ Bank; real estate taxes and assessments, and zoning ordinances; that Seller has full right, power and lawful authority to convey good and marketable title to the Premises to Seller free and clear of all liens, charges and encumbrances whatsoever except as set forth in this Section 4(a); that the current use of the Premises is in compliance with applicable zoning laws; and that Seller shall convey, transfer, and assign good and marketable title to the Premises to Purchaser or his nominee when Purchaser has fully performed and observed all of the terms of this Agreement, and has paid to Seller the full amount of the Purchase Price required under the terms hereof, subject only to the aforesaid restrictions and limitations.

(b) That the buildings situated on the Premises are situated entirely within the Premises.

(c) That the Seller has not and will not following the execution hereof enter into any agreement regarding the operation, maintenance, repair or management of the Premises or buildings without the prior written consent of Purchaser and there are no agreements of any kind, nature and description affecting the operation, maintenance, repair or management of the Premises and buildings which are being assumed by Purchaser.

(d) That Seller has no knowledge of nor has Seller received any notice from any governmental agency, authority or instrumentality with respect to the plan by any such agency, instrumentality or authority to appropriate, condemn or take by right of eminent domain all or any part of the Premises or buildings.

(e) That Seller has received no notice that the Premises are presently in violation of any applicable law, statute, or ordinance.

5. Mortgage Encumbrances and Subordination. Seller represents and warrants that the Premises are subject to only a first mortgage; Seller shall timely make all payments due under the first mortgage. Notwithstanding the foregoing, Purchaser agrees upon request of Seller to subordinate his interest in the Premises under this Agreement to the lien of any future mortgage or mortgages which Seller elects to place against the Premises, provided that the total amount of indebtedness to which Purchaser shall be required to subordinate shall not exceed the remaining unpaid principal balance of the purchase price due from Purchaser to Seller.

Purchaser shall upon demand of Seller promptly execute and deliver to Seller such instruments evidencing the subordination of Purchaser's interest in the Premises to the lien of such mortgages, and the failure to execute and deliver such instruments promptly upon request of Seller shall constitute a default hereunder.

6. Escrow Agent. Purchaser and Seller agree that \_\_\_\_\_ Title shall serve as and be the Escrow Agent in and for this transaction and the Escrow Agent's usual conditions of acceptance may be made a part hereof insofar as the same are not inconsistent with the terms hereof. The parties hereto agree that the following documents, instruments and funds shall be delivered to the Escrow Agent at the time and in the manner hereinafter set forth:

(a) Within five (5) days after the Execution Date, Purchaser and Seller shall deliver three (3) executed copies of this Agreement to the Escrow Agent who shall record this Agreement.

(b) Within five (5) days after the Execution Date, Purchaser shall deliver to the Escrow Agent certificates evidencing placement of the insurance required pursuant to the terms of Section 8 and 14 hereof.

7. Taxes. Seller shall continue to pay directly to the taxing authority current real estate taxes and assessments upon the Premises as they become due, provided that from and after the Execution Date, Seller shall deliver to Purchaser not later than fourteen (14) days before the last date for payment thereof without penalty copies of the current tax billings from the Lake County Treasurer with respect to taxes and assessments becoming due upon the Premises. Purchaser shall not later than ten (10) days thereafter pay to Seller the amount due for current taxes and assessments. Provided Purchaser complies with the foregoing, Seller agrees to indemnify, defend and save Purchaser harmless from any claim or demand relating to taxes and assessments upon the Premises. If either Seller or Purchaser fails to make payments due under this Section as and when due, the other party shall have the right pay same, but shall not be obligated to do so, and the amounts paid, if any, shall bear interest at the rate of ten percent (10%) per annum and shall be immediately due and payable.

8. Insurance. Purchaser shall obtain on the Execution Date and shall deliver to the Escrow Agent evidence that a policy of fire and extended coverage insurance in an amount not less than the Purchase Price which insures the improvements which are a part of the Premises against loss and damage by fire and any other casualty customarily covered by a standard fire and extended coverage insurance policy. Purchaser, Seller and the holders of any mortgages placed against the Premises in accordance with Section 5 hereof, shall be named as insureds under such policy of insurance as their interests may appear and the policy of insurance shall further provide that the insurer shall give Purchaser and Seller written notice not less than ten (10) days prior to the date such policy shall lapse or be cancelled for any reason. From and after the Execution Date, Purchaser shall at all times, continuously maintain such fire and extended coverage insurance in an amount not less than the Purchase Price on the Premises and all premiums due in connection therewith shall be paid by Purchaser. Purchaser shall deliver to Seller within ten (10) days of Seller's request evidence that such insurance is in full force and effect and that premiums due thereon have been paid in full. If Purchaser fails to make the payments of insurance premiums or fails to maintain insurance required under this Section 8 then in that event, Seller shall have the right, but shall not be obligated, to obtain insurance for the Premises and the premiums due in connection therewith paid by Seller shall be immediately due from Purchaser together with interest thereon at the rate of ten percent (10%) per annum which payment shall be in addition to the installments due and payable under this Agreement.

9. Use of Premises. From and after the Execution Date, Purchaser shall do or refrain from doing the following with respect to the Premises:

(a) Shall use and occupy or cause to be occupied the Premises in a careful, safe, prudent and proper manner and in conformity with all lawful, ordinances and regulations of appropriate and governing governmental authorities;

(b) Shall not suffer or permit waste to be committed upon all or any part of the Premises;

(c) Shall not make any major structural alterations to the Premises without obtaining Seller's written consent which consent shall not be unreasonably withheld and Seller does hereby assent to all alterations and improvements required to place all or any part of the buildings in a condition for occupancy by any tenant;

(d) Shall keep the Premises free and clear of all liens and encumbrances created by, through or under Purchaser;

(e) Shall permit Seller or Seller's agent to examine the Premises at any reasonable time or times upon prior verbal notice;

(f) Shall maintain and repair the Premises so that the same are at all times in as good condition and repair except for ordinary wear and tear and damage due to an insured loss;

(g) Shall perform all of the obligations of Purchaser as specified under this Agreement;

(h) Shall be permitted to lease all or any portion of the Premises to such persons, firms or corporations as Purchaser shall from time to time determine in his sole and absolute discretion, provided that no such lease shall be for a period of more than one (1) year or contain any option to renew the length of which when added to the length of the original term shall exceed one (1) year, without the advance written consent of Seller.

(i) As long as no default exists hereunder, or under Purchaser's Note as set forth in Section 3(a) hereof, Purchaser shall be entitled to collect and receive the rents and revenues attributable to the Premises and the leasing thereof.

Purchaser shall indemnify and save harmless Seller from and against all loss, liability, damages or expenses which Seller may incur in the event that Purchaser breaches or violates any terms or provisions in this Section 9.

10. Duties of Seller. From and after the Execution Date, Seller shall do or refrain from doing the following:

(a) Shall not cause any improvement or work to be performed upon, in, or to the Premises or buildings of any kind, nature and description;

(b) Shall not in any manner further encumber the Premises except as and to the extent permitted pursuant to Section 5 of this Agreement;

(c) Shall perform all of the obligations of Seller as specified under this Agreement.

(d) Shall not cause or permit any mechanic's liens to be filed against the Premises which are attributable to the actions or omissions of Seller.

11. Utilities. All utilities for services to the Premises prior to the Execution Date shall be the responsibility of and paid by Seller. All utility charges for services to the Premises on and after the Execution Date shall be the responsibility of and shall be paid by Purchaser. Purchaser shall arrange for a transfer of the utility accounts effective as of the Execution Date and Seller shall cooperate in arranging for such transfer and in terminating utility services to the Premises in the name of Seller as of the Execution Date.

12. Risk of Loss. All risk of loss to the Premises and buildings shall be assumed by and borne by Seller through and including the Execution Date. Purchaser shall, until the Closing Date, maintain fire and extended coverage insurance upon the Premises and buildings in an amount not less than the amount maintained by Seller as of the date of the Agreement upon the Premises.

13. Conveyance of Premises. On a date mutually agreed to between Purchaser and Seller ("Closing Date"), if Purchaser shall fully pay all monthly installment payments due and payable under this Agreement and shall pay the balance of the Purchase Price and all other sums due under this Agreement at the time and in the manner stated in this Agreement, Seller shall deliver to Purchaser or his nominee a General Warranty Deed for the Premises thereby conveying to Purchaser or his nominee, good and marketable title to the Premises free and clear of all liens, charges and encumbrances whatsoever except those permitted herein. Payment of the balance due under this Agreement, if any, at the time of such conveyance shall be made by Purchaser by depositing same with the Escrow Agent, who shall thereupon disburse the balance due on the Purchase Price to Seller and record the Warranty Deed, provided the Escrow Agent is in a position to issue to Purchaser the Escrow Agent's title guaranty in the sum of the Purchase Price insuring in Purchaser good and marketable record title to the Premises subject only to the matters permitted by this Agreement. In connection with the foregoing, the Escrow Agent shall provide for prorations and adjustments between the parties as follows:

- a) The fees of the Escrow Agent shall be evenly divided by Seller and Purchaser;
- b) The cost of the title guaranty in the amount of the Purchase Price shall be charged to Seller; and
- c) The cost of the conveyance fee/transfer tax shall be charged to Seller.

14. Injury. After the Execution Date, Purchaser shall indemnify and hold harmless Seller from any and all demands, losses or liabilities resulting from the injury to or death of any person or persons because of the negligence of Purchaser in the operation and use of the Premises. Purchaser shall obtain appropriate public liability insurance with combined single-

limit coverage of not less than \$500,000.00 covering property damage, injury or death. Seller shall be named as an additional insured under such policy of insurance and evidence that such policy of insurance is in full force and effect shall be, from time to time, delivered to Seller as and when requested. The policy of insurance required under this Section 14 shall provide that insurer shall give Seller written notice ten (10) days prior to the date of expiration or cancellation of such insurance policy.

15. Assignability. Purchaser shall not be permitted to assign all or any portion of his interest in the Premises hereunder without the express, advance, written consent of Seller, except to the extent of Purchaser's right to lease the Premises as provided herein. Provided that notwithstanding the foregoing, Purchaser shall be entitled to assign all or any portion of his interest in the Premises hereunder to any corporation, firm, or entity in which Purchaser owns a controlling interest.

16. Default by Purchaser. If Purchaser defaults in payment of the installment due and owing under Section 3(a) of this Agreement, or if Purchaser defaults in the payment of any other monetary sum due Seller hereunder, or should Purchaser default or otherwise breach or violate any other terms or provisions of this Agreement, which default, breach or violation remains in existence for a period in excess of thirty (30) days after the date of notice of said default, breach or violation is received by Purchaser, or if such default, breach or violation cannot be cured within said thirty (30) days, then such period of time as may be required for Purchaser to cure and remove such breach, default, or violation so long as Purchaser has commenced and continues to take such action as is reasonably required to cure and remove such default, then in such event, Seller shall have the right to treat this Agreement as thenceforth void, and re-enter upon the Premises and buildings at any time after such default, without serving further notice on the Purchaser or any person holding under it a notice to quit the Premises; and in the event this Agreement shall be so treated as thenceforth void and the Purchaser, or those under it, shall be thenceforth deemed a mere tenant of Seller, and be liable to be proceeded against without notice to quit, under the provisions of the law regulating proceedings in cause of forcible detainer, and the Seller, in such case shall be at liberty to sell the Premises and buildings and all of the Purchaser's interest therein including all improvements in the buildings and/or Premises made by Purchaser or any one claiming under Purchaser except that any tenant in the buildings shall have the right to remove therefrom at tenant's expense only its trade fixtures and machinery which is not permanently affixed to and made a part of the buildings, and all of Purchaser's interest in the buildings and such improvements shall be forfeited and Seller shall be at liberty to sell the same to any person whatsoever without being liable in law or in equity to the Purchaser or any person claiming under it for any damages in consequence of such sale, or to return any payments that shall have been made, all without prejudice to any other right or remedy which Seller may have at law or in equity and without prejudice to Seller's right to enforce payment of Purchaser's Promissory Note. In furtherance of the foregoing, if Purchaser shall default as aforesaid, then Seller shall have the right to deal with all tenants of any part of the buildings and/or Premises for and in place of Purchaser, and Purchaser shall and does hereby transfer, his right, title and

interest as lessor under any and all leases hereafter established by Purchaser in and to all or any part of the Premises. Seller agrees that all tenants claiming under Purchaser shall have the right to retain possession of that portion of the Premises leased by that tenant and Seller shall not disturb such tenant so long as such tenant pays and attorns directly to Seller the amount of all rental due and payable by that tenant from and after the date of a default, breach, or violation of Purchaser of any term or condition of this Agreement. No delay or omission in the exercise of any right or remedy accruing to Seller upon any breach by Purchaser under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring.

Notwithstanding anything to the contrary herein contained, in the event that Seller retakes possession of the Premises as a result of Purchaser's breach hereof without pursuing an action to foreclose Purchaser's interest hereunder, and in the further event that within two (2) years thereafter, Seller re-sells the Premises, then and in such event, Seller shall be entitled to recover from the proceeds of such sale the balance then due and remaining from Purchaser to Seller hereunder, plus reasonable attorney fees and costs actually incurred by Seller in connection with such re-sale, whereupon the balance of the sale proceeds then remaining shall be paid over and delivered to Purchaser. Further, in such event, Seller shall not be entitled to hold Purchaser liable for any deficiency following Seller's re-disposition of the Premises which exceeds the amount due on the contract plus reasonable attorney fees and costs actually incurred by Seller less the greater of (i) the amount which Seller actually receives on re-disposition of the Premises; or (ii) the amount which Seller could have received in connection with its re-disposition of the Premises to any cash buyer presented by Purchaser.

17. Default by Seller. If Seller shall breach or default the performance of any of the terms and conditions required by Seller hereunder, then Purchaser may elect to pursue any one or more of the following remedies: (i) suit for damages; (ii) suit for specific performance; (iii) any other remedy provided herein or by operation of law.

18. Condemnation. In the event that during the term of this Agreement and prior to the payment of the full balance of the Purchase Price hereunder, all or any portion of the Premises shall be taken for any public or quasi-public use, or under any statute or right of eminent domain, Purchaser shall have the right to negotiate and/or litigate for and on behalf of Purchaser and Seller with regard to the compensation to be paid for such taking. All such compensation shall be paid to Seller up to the full amount of the unpaid portion of the Purchase Price plus accrued interest thereon due Seller hereunder, and such payment shall be credited to Purchaser against said Purchase Price, provided that no such taking or partial taking shall operate to relieve Purchaser of his obligation to pay Seller the full balance of the Purchase Price due hereunder plus accrued interest except to the extent of compensation therefore actually paid to Seller.

19. Time. All time periods set forth in this Agreement are hereby made of the essence.

20. Possession. Possession of the Premises shall be delivered by Seller to Purchaser on the Execution Date.

21. Broker. Purchaser represents and warrants to Seller that Purchaser has not dealt with any real estate agent or broker in connection with the transaction contemplated by this Agreement, and Purchaser agrees to indemnify, defend and save Seller harmless with respect to any claim for real estate brokerage commission, fee, or other compensation on account of any and sales fees or commissions claimed to be due from Purchaser in connection with the purchase and sale of the Premises and/or this Agreement.

22. Notices. Any and all notices required under and/or in connection with this Agreement shall be in writing and sent by certified mail return receipt requested to the party who is entitled to receive that notice, and such notice shall be deemed to have been given when mailed by the party giving such notice has been deposited with the U.S. postal service with the required prepaid postage affixed thereto and such notices shall be sent to the following addresses.

TO THE SELLER: \_\_\_\_\_

WITH A COPY TO: \_\_\_\_\_

TO THE PURCHASER: \_\_\_\_\_

Seller and Purchaser hereby reserve the right at any time or times, by written notice to the other party hereto, to change the place at which such notices are to be mailed and the person or firm who is to receive a copy of such notice.

23. Entire Agreement. This instrument contains the entire agreement between Purchaser and Seller with respect to the purchase and sale of the Premises and all prior agreements between the parties hereto with respect to the purchase and sale of the Premises are hereby declared to be void and of no further force and effect whatsoever. No change or amendment to this Agreement may be made except by written instrument duly executed by Purchase and Seller.

24. Governing Law. This Agreement is executed and delivered in the State of Ohio and shall be governed and construed in accordance with the laws of that State.

25. Parties Bound. Each, every and all of the representations, warranties, covenants and agreements set forth in this Agreement shall survive recording of this Agreement, and the recording of the General Warranty Deed for record, and shall continue thereafter in full force and effect and shall be binding upon and inure to the benefit of Purchaser and Seller and their respective successors and assigns.

26. Titles. The titles and headings contained in this Agreement are for convenience only and shall not affect the interpretation of any term or provision hereof.

27. Copies. This Agreement is executed in multiple copies and each such executed copy shall be deemed to be an original.

**IN WITNESS WHEREOF**, the parties hereunto have executed this Agreement on the date and place hereinabove set forth.

**SELLER:**

\_\_\_\_\_, an Ohio limited  
liability company

By:\_\_\_\_\_

**PURCHASER:**

\_\_\_\_\_

