

Real Estate Closings

(Documents; Checklists; Coordination)

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REAL ESTATE CLOSINGS
(DOCUMENTS; CHECKLISTS; COORDINATION)

I. INTRODUCTION

A. Overview

1. Parties
2. Documents
3. Funding/Financing
4. Post-closing issues

B. Two rules to avoid problems: organization and attention to detail

II. PARTIES

A. Who Should Participate?

1. Residential or commercial transaction
2. Every party to a transaction must either attend in person or be properly represented through documents.
 - a. Parties to be represented:
 - i. Buyer(s) and seller(s)
 - ii. Party providing funding or financing, if any
 - iii. Title insurer
 - iv. Brokers, if any
 - v. Lien holder
 - b. Representation through documents: closing in escrow
 - i. Escrow agreement and instructions from the parties for handling documents and funds in escrow

- ii. Escrow agent may be title company, law firm, or another 3rd party
- iii. Confirm that escrow entity is insured; Lenders may require a closing protection letter from the title insurance underwriter

B. Who has authority to sign and deliver documents?

- 1. Verify (if necessary) that person signing is at least 18 years of age.
- 2. If the buyer or seller is a business entity, it is important to review governing documents to determine who is authorized to sign, and then ensure that an authorized person signs on its behalf.

a. Corporation, Limited Liability Company or Partnership

- i. Signature block should list name of the person and his/her role within the company
- ii. E.g.:

SELLER:

XYZ, Inc.,
a Michigan corporation

By: _____
Jane Doe, President

- iii. Notary block should also reflect that person is acting on behalf of the company in their specified role
- iv. Will likely need a resolution of the board of the company authorizing a particular individual to sign and deliver the closing documents. [*See corporate resolution example on Appendix A*]
- v. Will need to provide copy of operating agreement (for LLC) or an affidavit that there is no operating agreement

b. General partnership

- i. Typically, any partner may act on behalf of the partnership
- ii. Will likely need to obtain a resolution authorizing one of the parties to sign and deliver the closing documents.
- iii. If limited partnership, will need to provide copy of limited partnership agreement

- c. Trustee, personal representative, conservator, guardian, etc.
 - i. Party's specific capacity and authority to act must be clearly stated
 - ii. Party's authority to sign and deliver must also be verified
 - a) E.g., certificate of trust
 - b) The Michigan Trust Code (MTC), MCL §700.7101 *et seq.*, governs the authority of trustees.
 - c) The Estates and Protected Individuals Code (EPIC), MCL §700.1101 *et seq.*, governs the powers of personal representatives, conservators, etc.
 - iii. Power of Attorney (POA)
 - a) Document allowing a party to participate in a closing through an agent
 - b) Ideal if document is in recordable form so that it can be recorded in conjunction with the deed and other necessary documents
 - c) Should specify which actions the agent is permitted to undertake; depending on the situation, a broader or more specific POA may be appropriate. Check to see what lender (and others) wants specified. [*See limited power of attorney example on Appendix B*]
 - d) If the POA is "durable," then the powers it conveys are exercisable by the agent notwithstanding any subsequent incapacity or disability of the person who granted it
 - (i) Might be desirable if grantor is aged or ill
 - (ii) All POAs expire by their terms or at the death of the grantor, whichever is sooner
 - (iii) Before exercising authority under a durable POA, an attorney-in-fact must execute an acknowledgment in substantially the form required under MCL §700.5501(4)
 - (e) Revocation will not defeat good faith action of agent without actual knowledge

III. CLOSING DOCUMENTS

A. Preparation and Review of Documents

1. Use the purchase agreement as a guide to determine necessary closing documents
2. Generally a good idea to prepare a closing checklist identifying the required documents, which party is responsible for drafting and which party is required to sign which documents [*See closing checklist example on Appendix C*]
3. If preparing the documents, assemble in a packet and forward to client, opposing counsel, and title company in advance of closing
4. If not preparing documents, request to receive a copy of closing packet well in advance to allow for review and comment
5. What do you want to prepare?

B. General Closing Documents:

1. Conveyancing documents
 - a. Deed (warranty, covenant, quit claim) [*see examples on Appendix D*]
 - b. Land Contract
 - c. Lease
 - d. Bill of Sale (if any personal property conveyed) [*see example on Appendix E*]
2. Financing documents
 - a. Promissory note
 - b. Usually secured by a mortgage
 - c. Land contract
3. Other potential documents:
 - a. Survey, survey waiver or survey affidavit
 - b. Title insurance commitments updated to the time of closing
 - c. Owner's Affidavit

- d. Inspection reports and/or environmental reports
 - e. Tax proration statement
 - f. Notices of payment of taxes/utility bills
 - g. Assignment of any licenses/permits
 - h. Property transfer affidavit [*see example on Appendix F*]
 - i. Real Estate Transfer Tax Valuation Affidavit [*See example on Appendix G*]
- C. Any documents to be recorded must be in recordable form, as set forth in MCL §565.201
1. Document must be at least 8 1/2 by 11 inches but not greater than 8 1/2 by 14 inches
 2. Legibly printed on white 20-pound paper, using black ink for the printed portion and 10-point font
 3. The sides of all pages must have at least 1/2-inch margins, and the first page must have a 2 1/2-inch margin available at the top of the form for the application of recording information
 4. Title of the document must only identify one type of interest/conveyance at the top of the first page, i.e., no "and" in the title
 - a. NOTE: even though the title of recorded documents cannot purport to accomplish more than one function, it may in fact do so**
 - b. E.g., a document may be titled as "Mortgage" for recording purposes, but in fact function as a mortgage and an assignment of leases and rents
 - c. **one register of deeds office disagreed that only the title must reference one conveyance
 5. Remove or redact social security numbers from recordable/all documents

Practice Pointer: do NOT print on both sides of a page, particularly for recordable documents

D. Closing Statements or Memorandums

1. Unless otherwise stated, closing statements have no specified legal significance. Rather, they exist to document what occurred at closing.
 - a. Used to show what was signed and exchanged at closing and/or how the funds

were divided and distributed. Final document signed and delivered by buyer and seller acknowledging receipt of documents and funds.

- b. Can be prepared by an attorney, but often prepared by title company, as title company usually handles the collection and disbursement of funds.
2. At closing, it may be desirable to prepare a closing memorandum memorializing any discussions or other matters that arise during closing.
 - a. If there is a dispute, the closing statement is often the focal point
 - b. Post-closing memorandum may be good to memorialize issues and occurrences
 3. Real Estate Settlement Procedures Act (RESPA)
 - a. Applicable to residential closings if financing is involved (unless lender is an individual)
 - b. Requires a closing disclosure statement-H-25(A) Mortgage Loan Transaction Closing Disclosure
 - c. Borrower must have the opportunity to review the closing disclosure statement at least 3 business days before closing; requirement can only be waived in extreme situations (very rare)

E. Documents Relevant to New Construction

1. Generally, anyone who contributes to an improvement on real property has up to 90 days after finishing work to file and perfect a construction lien
2. Request construction lien waivers, sworn statements and potentially an indemnity from the title company
3. Affidavit of no construction liens

F. Estoppel Certificates and Waivers

1. Often required by title companies
2. Include items such as construction liens, competency, age of majority, bankruptcy proceedings, and duress/coercion
3. Each form must be considered individually. Some should be avoided, e.g., a certificate purporting to waive liability claims by buyer or seller against the broker

G. Tax Forms

1. Two important tax compliance requirements-those imposed by the Foreign Investment in Real Property Tax Act (FIRPTA) and real estate transaction reporting requirements imposed by the IRS
2. FIRPTA - Nonforeign affidavit
 - a. Only applies if the seller is a foreign person
 - b. Buyer (and his/her attorneys) must ascertain whether or not seller is a foreign person
 - c. Avoid requirements under the FIRPTA by obtaining a nonforeign affidavit from seller
 - d. If cannot obtain nonforeign affidavit from seller, then buyer must withhold an amount equal to 15% of the amount realized by seller in the sale
 - e. Does not apply if price is less than \$300,000 and the buyer intends to use as principal residence
3. 1099-S
 - a. IRS requires reporting of real estate transactions
 - b. A taxpayer is allowed to exclude up to \$250,000 (\$500,000 if married) on the sale or exchange of principal residence, provided that the property was owned and used by the taxpayer as taxpayers' principal residence for up to 2 years or more during the 5-year period before the date of sale
 - c. Attorneys need to ensure that this information return is filed
 - d. Title companies take care of this filing as part of their services if they conduct the closing

H. Other encumbrances may exist

1. Other/old liens
2. Out of chain of title interests
3. Aberrant claims

I. Closing Protection Letter (in favor of lender)

- J. Title insurance over recorded documents/claims
- K. Escrow Closing Instructions Letter [*See example on Appendix H*]
- L. Marked-Up Title Commitment, signed by title company

IV. FINANCIAL MATTERS

A. Disbursements

1. Closing statement should set forth purchase price and any other charges assessed against the parties
2. Buyer should know in advance what form the funds should take: certified checks, cashier's checks, money orders, and wired funds generally acceptable. Avoid personal checks and cash.
3. Funds or portions thereof may be disbursed from attorneys trust account or a title company's escrow account

B. Depositories

May be necessary if preexisting land contracts or mortgages will continue to encumber the premises

C. Property Taxes and Prorations

1. Closing statement should set forth tax prorations assessed and credited against each party
2. Parties are free to set up tax proration as they please in the purchase agreement

- a. If the purchase agreement is silent, however, then MCL §211.2 controls proration:

In a real estate transaction between private parties in the absence of an agreement to the contrary, the seller is responsible for that portion of the annual taxes levied during the 12 months immediately preceding, but not including, the day title passes, from the levy date or dates to, but not including, the day title passes and the buyer is responsible for the remainder of the annual taxes. As used in this subsection, 'levy date' means the day on which a general property tax becomes due and payable. MCL § 211.2(4).

- b. Typically want to avoid prorating taxes based on the fiscal year basis; each tax

bill is comprised of multiple taxing authorities with varying fiscal years.

3. Taxes paid in advance versus taxed paid in arrears
4. Property permanent parcel numbers

D. Assessments

1. Used to fund improvements to property undertaken by government (e.g., sidewalks, sewer lines, etc.)
2. Since an assessment reflects an improvement to property, it should be the expense of the seller, i.e., the purchase price should reflect the improvement
3. Exception, some assessments are annual
4. Like taxes, the closing statement should set forth assessments charged and credited against each party

E. Utility bills

1. Meters should be read on the day of closing or as close to it as possible
2. A party should be designated to pay each property bill or be prorated between both parties
3. NOTE: unpaid municipal bills-such as water-may become liens on property if not paid
4. May be necessary or advisable to establish a modest water/sewer escrow at closing.

V. POST-CLOSING ISSUES

A. Recording executed documents

1. Handled by attorney or title company, depending on how closing is conducted. If a financial institution is involved in the transaction, they usually prefer the title company to handle recording
2. Before a conveyancing document can be recorded with regard to a particular property, all outstanding taxes, transfer taxes, and recording fees must be paid
3. Conveyancing documents and any UCC financing statements for fixtures, crops, minerals, or timber should be recorded at the register of deeds in the county where the premises is located

- a. If there is a security agreement on personal property on the premises, the appropriate UCC financing statement should be filed with the Secretary of State
4. The register of deeds will return the original recorded document pursuant to the designation sent forth on the document

B. Closing Escrows

1. If certain obligations must be met after closing, certain documents or parts of the proceeds may be escrowed until those obligations occur
2. Documents and funds are held pursuant to an escrow agreement signed by the parties. This process is usually facilitated by title companies.
3. The escrow agreement should be particularized and may be simple or complex [*See example on Appendix I*]
4. As applied to Land Contracts:
 - a. Escrows can be important for land contracts, where the vendee must receive a deed after payoff
 - b. Problems can arise because the land contract payoff is often a number of years in the future; the land contract vendor may be deceased or difficult to locate
 - c. To avoid issues, the vendee could have the land contract vendor sign the deed at the original closing and then place the deed in escrow with disbursement upon payoff of the land contract. At issue is how to document this.

C. Property Transfer Taxes

1. State Property Transfer Taxes

- a. State Real Estate Transfer Tax Act, MCL § 207.521-.537
- b. Tax of \$3.75 for each \$500 of the value of the property being transferred (or fraction thereof)

This is also commonly expressed as \$7.50 per \$1000 of purchase price

- c. Also applies to transfers of a controlling interest in an entity that owns real property, if the real property owned by the entity makes up 80% or

more of the fair market value of the entity's assets

2. County Transfer Taxes

- a. Real Estate Transfer Tax, MCL §207.501-.513
- b. Tax of \$.55 for each \$500 of purchase price in a county with a population of less than 2 million, and not more than \$.75 in a county of two million or more

This is also commonly expressed as \$1.10 per \$1000 of purchase price

3. Seller or grantor is liable for transfer taxes, although this obligation can be transferred to the buyer by the purchase agreement

4. Common exemptions to transfer tax requirements:

- a. Conveyances for which the value of consideration is less than \$100
- b. Documents that evidence leases for less than 35 years, with options
- c. Documents executed by spouses creating or disjoining tenancies by the entirety
- d. Documents to adjust boundary lines if no consideration given
- e. Land contracts in which legal title does not pass to grantee until total consideration is paid
- f. Documents creating joint tenancies if one party already owns the property
- g. Conveyance from an individual to an individual's child/grandchild
- h. Transfer of controlling interest exemptions:
 - i. Transfers necessary to effect dissolution of an entity
 - ii. Transfer between an LLC or partnership if the members/partners interests are held by the same persons in the same proportion as before the transfer

D. Property Transfer Affidavits

1. Necessary to notify the relevant taxing authority if there has been a "transfer of ownership" or if claiming an exemption from a "transfer of ownership"

2. Assessor for the relevant taxing authority must be notified within 45 days after a transfer of ownership. Unless an exemption is claimed, the property's taxable value with "uncap" and be reassessed at current market rates
3. Transfers of ownership include:
 - a. Conveyances of property by deed or land contract (but some exceptions if closely related persons or entities are involved)
 - b. Leases over 35 years (with exceptions for wind leases)
 - c. Conveyance of more than 50% interest in a business (with certain exceptions)
 - d. Changes in the sole present beneficiary of a trust (with certain exceptions)
 - e. See MCL §211.27a for more examples and exceptions

E. Principal Residence Exemption; Agricultural Property Exemption

1. In general
 - a. Caps the amount of real property tax increase for residential real property that serves as the taxpayer's principal residence
 - b. Principal residences are also exempt from taxes levied by local school districts for operating purposes
 - c. Taxpayer may only hold one exemption on his or her primary residence
 - d. Certain qualified agricultural property is also exempt from taxes levied by local school districts for operating purposes
 - e. A taxpayer may claim a principal residence exemption or qualified agricultural property exemption by filing the appropriate Michigan Department of Treasury form with the local taxing authority
2. Closing matters
 - a. The person responsible for preparing the closing statement must provide a principal residence rescission form to the seller and a principal residence affidavit to the buyer
 - b. The completed forms must be submitted to the local taxing authority-a rescission must be submitted within 90 days after the property ceases to be used as the principal residence of the party in question

VI. CONCLUSION

APPENDICES

Appendix A:	Seller Resolutions (Corporation)
Appendix B:	Limited Power of Attorney
Appendix C:	Closing Checklist
Appendix D:	Forms of Deeds
Appendix E:	Bill of Sale
Appendix F:	Property Transfer Affidavit
Appendix G:	Real Estate Transfer Tax Valuation Affidavit
Appendix H:	Escrow Closing Instructions Letter (Seller)
Appendix I:	Escrow Agreement

APPENDIX A
SELLER RESOLUTIONS

UNANIMOUS WRITTEN CONSENT RESOLUTION
OF THE BOARD OF DIRECTORS

The undersigned, being all of the Directors of _____, a Michigan corporation (the "Corporation"), do hereby consent and agree that the following action be taken, and the same shall be and is, in all respects, a valid corporate action as though it had been authorized at the meeting of the Board of Directors of the Corporation, to wit:

WHEREAS, the Corporation intends to sell certain real property commonly known as _____, in the City of _____, _____ County, Michigan (the "Property") to _____, a Michigan _____ ("Purchaser") for the sum of _____, plus or minus prorations, pursuant to the terms of a Purchase and Sale Contract (the "Purchase Agreement") between the Corporation, as seller, and Purchaser; and

WHEREAS, in order to consummate the sale of the Property (the "Sale"), it will be necessary for a duly elected officer of the Corporation, or such other persons authorized hereunder, to execute certain documents including, without limitation, certain deeds, a closing statement and certain title documents and other documents required in connection the Sale (collectively, the "Closing Documents"); and

NOW, THEREFORE, BE IT RESOLVED that the undersigned hereby approves of the Corporation selling the Property to Purchaser pursuant to the terms of the Purchase Agreement and executing all related Closing Documents.

FURTHER RESOLVED that _____, President of the Corporation (hereinafter referred to as "Authorized Agent") is hereby authorized, empowered and directed to execute, acknowledge and deliver the Closing Documents in the name of and on behalf of the Corporation, and to take such other actions as Authorized Agent in his discretion deems necessary, reasonable or appropriate in connection with the Sale, and the execution of any Closing Documents by Authorized Agent shall be deemed to be evidence of the approval of such document by Authorized Agent.

FURTHER RESOLVED that all actions taken by the Authorized Signatory on behalf of the Corporation in connection with the Sale, including, without limitation, the execution of the Purchase Agreement, are hereby ratified, adopted and approved.

Dated: _____

DIRECTORS:

**APPENDIX C
CLOSING CHECKLIST**

DOCUMENT CHECKLIST

Purchase of _____ **[Property Name]**
Closing Date:

Documents Delivered and/or Signed at closing

Document Name:	Drafter:	Signer:	Status:
1. Purchase Agreement			
2. Escrow Agreement			
3. Assignment of Purchase Agreement			
4. Closing Acknowledgment and Agreement Letter			
5. Assignment of Member Interest			
6. Closing Statement			
7. Deed			
8. Bill of Sale			
9. Assignment and Assumption of Leases			
10. Assignment of Security Deposits			
11. Assignment and Assumption of Intangibles			
12. Notice to Service Providers			
13. Notice to Tenants			
14. FIRPTA-non-foreign affidavit			
15. Assignment of company receivables			
16. Assignment of escrows, reserves, accounts			
17. 1031 Exchange Documents			
18. Approval of Transfer/New Financing			
19. Owner's Affidavit/ Title Company			
20. Indemnification Agreement			
Proforma Title Policy - Owners			
Post-Closing: Documents to Agency:			
a. Purchase Agreement			
b. Certificate of Good Standing			
c. Transfer Fee			

APPENDIX D
BASIC FORMS OF DEEDS

Quit Claim Deed

The Grantor(s), _____, whose address is _____,
quit claim(s) to the Grantee(s), _____, whose address is
_____, the following described premises situated in the City/Town of
_____, County of _____, State of Michigan:

[See Exhibit "A" attached hereto]

For the sum of: [see Real Estate Transfer Tax Valuation Affidavit submitted contemporaneously
herewith]

*[The language in the following two paragraphs must be included if the property conveyed is not
platted or in a condominium. MCL §560.109(3)- (4)]*

Grantor grants to Grantee the right to make [number all] divisions under Section 108 of the
Land Division Act, Act No. 288 of the Public Acts of 1967. *If you insert an exact number of
divisions intending to grant all divisions and the number of acres is more than 10, include
the following sentence: Grantor intends to transfer to Grantee the right to make all divisions
Grantor may have under the Act.*

This property may be located within the vicinity of farmland or a farm operation.
Generally accepted agricultural and management practices which may generate noise,
dust, odors, and other associated conditions may be used and are protected by the
Michigan Right to Farm Act.

Dated this _____ day of _____

Signed by:

STATE OF _____ }

COUNTY OF _____ } ss.

The foregoing instrument was acknowledged before me on the ___ day of _____
by _____, the Authorized Signatory of _____, a Michigan
_____, on behalf of said company.

Print Name: _____
Notary Public, _____ County, Michigan
Acting in _____ County
My Commission Expires: _____

Instrument drafted by and
when recorded return to:

Covenant Deed

_____, a _____ (“Grantor”), whose address is _____, grants, bargains and conveys to _____, a _____ (“Grantee”), whose address is _____, the following described premises situated in the City/Township of _____, County of _____, and State of Michigan, and more particularly described on Exhibit A attached hereto, together with all improvements, fixtures, easements, hereditaments and appurtenances associated with the land (collectively, the “Property”), subject only to those encumbrances set forth on Exhibit B attached hereto (“Permitted Exceptions”). Grantor covenants and agrees that the Property is free from encumbrances created by Grantor and will defend the Property against the lawful claims and demands of all persons claiming by, through or under Grantor, but against no other claims or person, but subject to the Permitted Exceptions.

This Deed is given for the sum of: [see Real Estate Transfer Tax Valuation Affidavit filed simultaneously herewith.]

[The language in the following two paragraphs must be included if the property conveyed is not platted or in a condominium. MCL §560.109(3)- (4)]

Grantor grants to Grantee the right to make [number all] divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967. *If you insert an exact number of divisions intending to grant all divisions and the number of acres is more than 10, include the following sentence: Grantor intends to transfer to Grantee the right to make all divisions Grantor may have under the Act.*

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

Dated: _____

_____,
a _____

By: _____

Name: _____

Its: _____

State of Michigan }

County of _____ }

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, in his/her capacity as _____ of _____, a _____, on behalf of said company.

Notary Public
_____ County, Michigan
My Commission _____
Acting in _____ County

Prepared by and when recorded return to:

WARRANTY DEED

_____, a Michigan _____, whose address is _____ (“Grantor”) conveys and warrants to _____, a Michigan _____, whose address is _____ (“Grantee”), the following described real estate located in the City of _____, County of _____ and State of Michigan (the “Property”):

[see attached Exhibit A]

together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, for the sum of _____, subject to easements and building and use restrictions of record and further subject to zoning ordinances.

[The language in the following two paragraphs must be included if the property conveyed is not platted or in a condominium. MCL §560.109(3)- (4)]

Grantor grants to Grantee the right to make *[number all]* divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967. *If you insert an exact number of divisions intending to grant all divisions and the number of acres is more than 10, include the following sentence: Grantor intends to transfer to Grantee the right to make all divisions Grantor may have under the Act.*

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

Dated: _____, 20____, _____, a Michigan _____

By: _____
Name: _____
Its: Authorized Signatory

STATE OF MICHIGAN)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on the ___ day of _____ by _____, the Authorized Signatory of _____, a Michigan _____, on behalf of said company.

Print Name: _____
Notary Public, _____ County, Michigan
Acting in _____ County
My Commission Expires: _____

Instrument drafted by and
when recorded return to:

APPENDIX E
BILL OF SALE AND ASSIGNMENT

_____, a Michigan corporation ("Seller"), whose address is _____, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, assign, transfer and convey to _____, a _____ ("Purchaser"), whose address is _____, all of Seller's right, title and interest in any and all personal property located at the real property identified on the attached Exhibit A (the "Real Property"), including that certain personal property more particularly described in Exhibit B, attached hereto and incorporated herein by reference (the "Personal Property").

The Personal Property is being conveyed "AS IS", "WHERE IS", and "WITH ALL FAULTS", without any representation or warranty whatsoever as to its condition or fitness for any particular purpose. Seller represents and warrants to Purchaser that it has good and marketable title to all of the Personal Property, free and clear of all liens or encumbrances. Seller further represents and warrants to Purchaser that it has full power and authority to transfer and convey the Personal Property to Purchaser. Purchaser is acquiring the Personal Property based solely upon Purchaser's own independent investigations and inspections of the same and not in reliance on any information provided by Seller or Seller's agents or contractors.

General Assignment.

To the extent that such property exists and is legally transferable, and without warranty, express or implied, Seller hereby grants, sells, transfers, assigns, sets over and conveys to Purchaser the following described properties:

A. all intangible assets and intellectual property, trademarks, service marks and logos, if any, to the extent used or useable in connection with the operation of the Real Property, and all customer lists, telephone and telecopier numbers, if any.

B. all licenses, franchises, rights and governmental or other permits, authorizations, consents and approvals possessed by Seller related to ownership and/or to operation the Real Property to the extent that same are legally assignable, if any.

C. all right, title and interest in and to all contracts and leases relating to, and entered into in the ordinary course of Seller's operation of the Real Property, including, without limitation, all service and maintenance agreements.

D. all rights of Seller under any express or implied guaranties, warranties, indemnifications and all other rights, if any, and to the extent available, which Purchaser may have against suppliers, laborers, materialmen, contractors or subcontractors arising out of or in connection with the installation, construction and maintenance of the improvements, fixtures and personal property on or about the Real Property, together with the original of all such guaranties, warranties and such similar instruments, and assignment of name, permits, franchises and the like, if any.

IN WITNESS WHEREOF the Seller has caused this instrument to be effective as of the
_____ day of _____

Seller:

_____,
a Michigan corporation

By: _____

Name: _____

Its: _____

EXHIBIT B

PERSONAL PROPERTY

(a) Any and all fixtures, furniture, machinery, equipment, appliances, improvements and other personalty of whatever kind or character owned by Seller, lying and being situated at and used or useable in connection with the ownership, use, operation, repair and maintenance of the Real Property, including all fixtures and other property affixed thereto, including without limitation, any and all heating, air conditioning, plumbing, lighting, communications, irrigation systems, all gas and electric fixtures, appliances and wiring, engines, boilers, incinerators, motors, dynamos, heating and air conditioning equipment, sinks, water closets, basins, pipes, electrical systems, faucets, fire prevention and extinguishing apparatus, burglar alarms, security systems and equipment, and other furnishings and decor equipment, spare parts, materials, and supplies for the ownership, use, operation, maintenance, and repair of the Real Property or the personal property referred to herein or both, tools, supplies, and all other personal property owned by Seller which is located on or is used or useable in connection with the ownership, use, operation, maintenance, or repair of the Real Property, or the personal property referred to herein or both, whether tangible or intangible, and other improvements of every kind and nature, but specifically excluding any personal property of tenants under any leases.

(b) Rights in and to all good will, all certificates, books, records, plans, specifications, designs, drawings, licenses, business licenses, state health department licenses, licenses to conduct business, and all other permits, licenses, approvals, authorizations and rights obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning ownership, operation, use or occupancy of the Real Property, if any and to the extent they are assignable without the consent of another party, and all business records, maintenance and operating records, keys and telephone exchange numbers, if any and to the extent they are assignable without the consent of another party.

(c) To the extent assignable without the consent of another party, all of Seller's rights in and to (i) all licenses, permits, approvals and similar documents relating to the Real Property, (ii) all plans, drawings, specifications, surveys, engineering reports, and other technical descriptions relating to the Real Property, (iii) all warranties and guaranties (express or implied) issued in connection with or arising out of (a) the purchase or repair of all fixtures, fittings, appliances, apparatus, equipment, machinery and other personal property owned by Seller, if any, and affixed or attached to or placed or situated upon, and used in connection with the Real Property, and (b) the construction, alteration, maintenance and repair of any of the improvements located on the Real Property, (iv) indemnification and all other rights, if any, which Seller may have against suppliers, laborers, materialmen, contractors or subcontractors arising out of or in connection with the installation, construction and maintenance of the improvements, fixtures and personal property on or about the Real Property, together with the original of all such guaranties, warranties and such similar instruments.

(d) Any other personal property of Seller not specifically listed above but which Seller is obligated to convey to Purchaser pursuant to the Purchase Agreement.

APPENDIX F PROPERTY TRANSFER AFFIDAVIT

Reset Form

Michigan Department of Treasury
2766 (Rev. 05-16)

L-4260

Property Transfer Affidavit

This form is issued under authority of P.A. 415 of 1994. Filing is mandatory.

This form must be filed whenever real estate or some types of personal property are transferred (even if you are not recording a deed). **The completed Affidavit must be filed by the new owner with the assessor for the city or township where the property is located within 45 days of the transfer.** The information on this form is NOT CONFIDENTIAL.

1. Street Address of Property		2. County		3. Date of Transfer (or land contract signed)	
4. Location of Real Estate (Check appropriate field and enter name in the space below.) <input type="checkbox"/> City <input type="checkbox"/> Township <input type="checkbox"/> Village				5. Purchase Price of Real Estate	
				6. Seller's (Transferor) Name	
7. Property Identification Number (PIN). If you don't have a PIN, attach legal description. PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice.				8. Buyer's (Transferee) Name and Mailing Address	
				9. Buyer's (Transferee) Telephone Number	
Items 10 - 15 are optional. However, by completing them you may avoid further correspondence.					
10. Type of Transfer. Transfers include, but are not limited to, deeds, land contracts, transfers involving trusts or wills, certain long-term leases and business interest. See page 2 for list. <input type="checkbox"/> Land Contract <input type="checkbox"/> Lease <input type="checkbox"/> Deed <input type="checkbox"/> Other (specify) _____					
11. Was property purchased from a financial institution? <input type="checkbox"/> Yes <input type="checkbox"/> No		12. Is the transfer between related persons? <input type="checkbox"/> Yes <input type="checkbox"/> No		13. Amount of Down Payment	
14. If you financed the purchase, did you pay market rate of interest? <input type="checkbox"/> Yes <input type="checkbox"/> No				15. Amount Financed (Borrowed)	
EXEMPTIONS					
Certain types of transfers are exempt from uncapping. If you believe this transfer is exempt, indicate below the type of exemption you are claiming. If you claim an exemption, your assessor may request more information to support your claim.					
<input type="checkbox"/> Transfer from one spouse to the other spouse					
<input type="checkbox"/> Change in ownership solely to exclude or include a spouse					
<input type="checkbox"/> Transfer between certain family members *(see page 2)					
<input type="checkbox"/> Transfer of that portion of a property subject to a life lease or life estate (until the life lease or life estate expires)					
<input type="checkbox"/> Transfer between certain family members of that portion of a property after the expiration or termination of a life estate or life lease retained by transferor ** (see page 2)					
<input type="checkbox"/> Transfer to effect the foreclosure or forfeiture of real property					
<input type="checkbox"/> Transfer by redemption from a tax sale					
<input type="checkbox"/> Transfer into a trust where the settlor or the settlor's spouse conveys property to the trust and is also the sole beneficiary of the trust					
<input type="checkbox"/> Transfer resulting from a court order unless the order specifies a monetary payment					
<input type="checkbox"/> Transfer creating or ending a joint tenancy if at least one person is an original owner of the property (or his/her spouse)					
<input type="checkbox"/> Transfer to establish or release a security interest (collateral)					
<input type="checkbox"/> Transfer of real estate through normal public trading of stock					
<input type="checkbox"/> Transfer between entities under common control or among members of an affiliated group					
<input type="checkbox"/> Transfer resulting from transactions that qualify as a tax-free reorganization under Section 368 of the Internal Revenue Code.					
<input type="checkbox"/> Transfer of qualified agricultural property when the property remains qualified agricultural property and affidavit has been filed.					
<input type="checkbox"/> Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed.					
<input type="checkbox"/> Transfer of land with qualified conservation easement (land only - not improvements)					
<input type="checkbox"/> Other, specify: _____					
CERTIFICATION					
I certify that the information above is true and complete to the best of my knowledge.					
Printed Name					
Signature				Date	
Name and title, if signer is other than the owner		Daytime Phone Number		E-mail Address	

APPENDIX G

REAL ESTATE TRANSFER TAX VALUATION AFFIDAVIT

Michigan Department of Treasury
2705 (Rev. 11-16)

Reset Form

Real Estate Transfer Tax Valuation Affidavit

Issued under authority of Public Act 134 of 1966 and 330 of 1993 as amended.

This form must be filed with the Register of Deeds for the county where the property is located either when you choose not to enter the amount paid for real estate on the deed or when you contract for the transfer or acquisition of a controlling interest in an entity if the real property owned by that entity comprises 90% or more of the fair market value of the assets of the entity determined in accordance with generally accepted accounting principles. "Controlling interest" means more than 80% of the total value of all classes of stock of a corporation; more than 80% of the total interest in capital and profits of a partnership, association, limited liability company, or other unincorporated form of doing business; or more than 80% of the beneficial interest in a trust. The tax is based on the value of the real property transferred and is collected at the time the contract or instrument of conveyance is submitted for recording. "Value" means the current or fair market worth in terms of legal monetary exchange at the time of the transfer.

1. County of Property		2. City or Township of Property	
3. Names of ALL Sellers			
Seller's Mailing Address(es)		City	State ZIP Code
4. Names of ALL Purchasers			
Purchaser's Mailing Address(es)		City	State ZIP Code
5. Type and Date of Document <input type="checkbox"/> Land Contract Date of Contract: _____ <input type="checkbox"/> Deed Date: _____ <input type="checkbox"/> Contracts for the transfer or acquisition of a controlling interest in entity where 90% or more of the FMV of the assets are real property. The contract may be attached to this form when it is filed with the Register of Deeds.			
Entity Name	State of Organization	Date of Contract	
Entity Address			
6. Cash Payment and/or Debt Relieved	7. Amount of Mortgage/Land Contract	8. Total Consideration (Add lines 6 & 7)	
9. Amount of County Tax	10. Amount of State Tax	11. Total Revenue Stamps (Add lines 9 & 10)	
12. If consideration is less than market value, state market value.			
13. Legal Description of Real Estate Transferred			
CERTIFICATION			
<i>I certify that the information above is true and complete to the best of my knowledge.</i>			
Seller's Signature		If signer is other than the seller, print name and title	
Seller's Signature		If signer is other than the seller, print name and title	
Seller's Signature		If signer is other than the seller, print name and title	
Seller's Signature		If signer is other than the seller, print name and title	
NOTARIZATION			
Subscribed and sworn to me	Notary Public State of Michigan; County of	on this date	My commission expires on

APPENDIX H
ESCROW CLOSING INSTRUCTIONS LETTER
(SELLER)

[TO BE PLACED ON
LAWYER'S LETTERHEAD]

_____, 2021

[Title company
And Address
Attn: Escrow Agent]

Re: Purchase and Sale of Real Property Located at _____
Your File No. _____

Dear _____:

Reference is made to the captioned transaction which, pursuant to a separate agreement between _____ (“Seller”) and _____ (“Purchaser”) is scheduled to close no later than _____, 2021 (the “Closing”). The purpose of this letter is to set forth the conditions under which _____ (the “Title Company”) is to hold certain documents, make certain distributions and otherwise close on the transaction.

I. DELIVERABLES

A. Seller Documents:

I am herewith delivering to the Title Company, in escrow, the following original documents executed by Seller (collectively, the “Seller Documents”):

1. Covenant Deed (“Deed”);
2. Assignment and Assumption of Lease (“Assignment”);
3. Real Estate Transfer Tax Valuation Affidavit;
4. Owner’s Affidavit;
5. Resolutions of Seller; and
6. Combined Settlement Statement (“Settlement Statement”).

You are to hold and disburse the Seller Documents strictly in accordance with the instructions set forth in this letter.

B. Purchaser Documents:

By agreement, Purchaser has agreed to deliver to you the following original documents executed by Purchaser and, where applicable, duly notarized (collectively, the "Purchaser Documents" and, together with the Seller Documents, the "Closing Documents"):

1. the Assignment, countersigned;
2. Property Transfer Affidavit;
3. the Settlement Statement, countersigned;
4. such other documents as you may require.

II. DISBURSEMENTS

On or before the date of Closing, Purchaser should wire to the Title Company funds in the total amount of \$, as reflected on the Settlement Statement. At (and only at) such time as (i) you have timely received all of the Purchaser Documents properly signed by Purchaser and, where applicable, duly notarized, (ii) you have received the above-referenced payment from Purchaser, (iii) you are prepared to issue to Purchaser an Owner's Title Insurance Policy for the Property or a marked up copy of the Title Commitment (in either event, the "Title Policy"), and (iv) you have received email confirmation from the undersigned, as counsel to Seller, that Seller is ready to close on the transaction contemplated herein:

- A. You should date any undated Closing Documents as of the date of Closing;
- B. You should cause the Deed to be recorded by the Register of Deeds of County, Michigan;
- C. You should disburse the funds provided by Purchaser strictly in accordance with Settlement Statement;
- E. You should issue to Purchaser the Title Policy;
- F. You should release one (1) copy of each of the fully-executed Closing Documents to Seller, c/o the undersigned, and release copies of each any fully-executed Closing Documents to Purchaser as they may direct.
- G. You should tender the Balance Due to Seller, as reflected on the Settlement Statement, to Seller pursuant to wire transfer instructions provided by Seller under separate cover.
- H. You should provide written confirmation to the parties that you have concluded the foregoing steps.

The Seller Documents are delivered to the Title Company, in escrow, and with the instruction and understanding that the Title Company will strictly follow the foregoing procedures. If and in the event this transaction has not closed in accordance herewith on or before 5:00 pm EST on the aforementioned date of Closing, you shall return the escrowed documents to the undersigned or the Seller's attorney, as applicable, unless you receive written direction from me and Seller's counsel to the contrary.

Very truly yours,

Accepted and Agreed:

[Title Company]

By: _____

Name: _____

Its: _____

APPENDIX I
ESCROW AGREEMENT

Escrow Agreement

This agreement (the "Agreement") is entered into on *[date]* between *[seller name]* of *[address of seller]* , (the "Seller"), *[name of buyer]* of *[address of buyer]* , (the "Buyer"), and *[name of escrow agent]* of *[address of escrow agent]*, (the "Escrow Agent"), with regard to the sale of real estate located in *[township]* Township, *[county]* County, Michigan, described as:

[legal description]

(the "Premises"), as delineated by the purchase agreement dated *[date]* between the Seller and the Buyer, a copy of which is attached as Exhibit A (the "Sales Agreement") upon the terms and conditions set forth below.

1. Escrow Agent's duties. Pursuant to the Sales Agreement, the Escrow Agent shall hold in trust all money and documents with regard to the sale of the Premises. The money and documents have been delivered to the Escrow Agent by the parties to this Agreement or their agents, employees, or assigns, as stated below.

2. Seller's duties. Seller has delivered into escrow with the Escrow Agent the following documents, under the Sales Agreement: *[seller documents held in escrow]*.

3. Buyer's duties. Buyer shall deliver into escrow with the Escrow Agent *[\$amount]* in certified funds, in compliance with the Sales Agreement, and shall deliver into escrow with the Escrow Agent the following documents, which Buyer must produce under the Sales Agreement: *[buyer documents held in escrow]*.

4. Completion of the Sales Agreement. If Seller and Buyer fully comply with the Sales Agreement, the Escrow Agent shall deliver all funds and documents held under this Agreement at the closing or as Buyer and Seller direct. The requirements of this Agreement must be completed by *[date]*, or the Escrow Agent may file an interpleader complaint with the *[county]* County Circuit Court, deposit all funds and documents with the court, and have no further obligations under this Agreement.

5. Delivery of money and documents to Seller. If Seller delivers the documents stated above and Buyer refuses or fails to comply with the requirements stated above, the Buyer shall forfeit the *[\$amount]* in escrowed funds which the Escrow Agent holds, and the Escrow Agent shall promptly deliver to Seller upon receipt of an undisputed notice from Seller of Buyer's failure to perform Buyer's obligations. In that event, all documents shall be returned to the party who supplied them.

6. Refund of money to Buyer. If Buyer complies with the Sales Agreement and the Seller refuses or fails to comply with the Sales Agreement, the Escrow Agent shall

promptly deliver the *[\$amount]* to Buyer on receipt of an undisputed notice from Buyer of Seller's failure to perform Seller's obligations. In that event, all documents shall be returned to the party who supplied them.

7. Notice of failure to perform. If either Buyer or Seller notifies the Escrow Agent of the other's failure to perform the obligations under the Sales Agreement, the Escrow Agent shall pay the funds held under this Agreement to the party sending the notice within 10 days after (i) receipt of the notice and (ii) forwarding by the Escrow Agent of the written notice to the other party, unless a written protest by the other party is received by the Escrow Agent within 10 days after the date of forwarding.

8. Resolution of disputes. If the Escrow Agent receives a protest to the notice of failure to perform obligations, the Escrow Agent shall have no obligation to transfer the funds or documents held under this Agreement until the dispute is resolved by the parties and the Escrow Agent receives a written notice of the resolution, signed by both parties, or a court order by a court of competent jurisdiction directing the payment and delivery of documents.

9. Reliance by the Escrow Agent. The Escrow Agent shall not be responsible for the authenticity of any deed or signature and may rely exclusively on, and shall be protected when acting on, any notice, affidavit, request, consent, instruction, check, or other document it believes in good faith to be genuine, to be signed or presented by the proper person, or to be duly authorized or properly made. The Escrow Agent shall have no responsibility except to perform its duties as stated in this Agreement, and no additional duties shall be inferred or implied under this Agreement.

10. Fees. The Escrow Agent shall be paid a fee of *[\$amount]* as of the effective date of this Agreement for its duties under this Agreement.

11. Effective date. This Agreement shall be effective as of the date first stated above.

SELLER

[Name of seller]

By: *Isl* _____
[Typed name of authorized signer]
Its: *[Title of authorized signer]*

PURCHASER

[Name of purchaser]

By: *Isl* _____
[Typed name of authorized signer]

Its: *[Title of authorized signer]*

ESCROW AGENT

[Name of escrow agent]

By: *Isl* _____

[Typed name of authorized signer]

Its: *[Title of authorized signer]*

**Alternative Escrow Provisions
Terms of Escrow**

(a) The Escrow Agent shall receive the Escrowed Documents and the Deposit, hold them and deliver them in accordance with the provisions stated in this Agreement.

(b) Seller and Buyer agree that the Escrow Agent assumes no liability under this Agreement except that of the holder of the Deposit and the Escrowed Documents. In the event of any dispute as to whether the Escrow Agent is obligated to deliver the Deposit and/or the Escrowed Documents to Seller or Buyer, the Escrow Agent shall not be obligated to make any delivery of the Deposit or Escrowed Documents, but in such event may hold the Deposit and the Escrowed Documents until receipt by the Escrow Agent of authorization in writing, signed by both Seller and Buyer, directing the disposition of the Deposit and the Escrowed Documents. In the absence of any such authorization, the Escrow Agent may hold the Deposit and the Escrowed Documents until a final order by a court of competent jurisdiction determining the rights of Seller and Buyer to the Deposit and the Escrowed Documents. If written authorization is not given, or proceedings for determination are not begun and diligently continued, the Escrow Agent shall have no obligation to bring an appropriate action or proceeding for leave to deposit the Deposit and the Escrowed Documents with a court of competent jurisdiction. However, the Escrow Agent may at its election begin an interpleader action to and deliver the Deposit and Escrow Documents to a court to determine which party or parties should receive any part or all of the Deposit and the Escrowed Documents, and upon so doing, shall be relieved of any further liability of responsibility for the Deposit and the Escrowed Documents.

(c) Seller and Buyer hereby agree to jointly and severally indemnify, save and hold the Escrow Agent harmless from any liability resulting from the Escrow Agent's duties, absent any commission or omission by the Escrow Agent amounting to willful misconduct or gross negligence.

(d) Seller and Buyer agree to each pay one-half of any fee charged by the Escrow Agent for its duties under this Agreement.

(e) The Escrow Agent shall be entitled to rely upon any documents which it receives which it in good faith believes are signed by one or both of the parties and

delivered to it, and rely upon any notice which it receives which it believes in good faith was delivered by one or the other of the parties. The Escrow Agent shall also be entitled to rely upon any notice or approval which it believes, in good faith that it received from any officer or agent of either of the parties with regard to any of the actions it is to perform under this Agreement.

(f) Upon delivery of the Deposit and the Escrowed Documents in accordance with this Agreement, the Escrow Agent shall be released and acquitted from any further liability under this Agreement, it being expressly understood that the liability of the Escrow Agent is limited by the terms and conditions set forth above. The Escrow Agent shall have no obligation to perform any duties except those set forth in this Agreement. The escrow shall terminate and the Escrow Agent's duties shall be completed upon its delivery of the Escrowed Documents to the respective parties as stated above in this Agreement and its delivery of the Deposit for a title insurance premium under the terms of this Agreement, or on [date], whichever shall first occur. If [date] shall arrive without any notice from the parties with regard to actions to complete the delivery of the Deposit and Escrowed Documents from the escrow, the Escrow Agent shall return the Deposit and all of the Escrowed Documents to Seller.