

**CITY OF MADISON HEIGHTS
ELECTRONIC COUNCIL AGENDA REQUEST FORM**

SUBMITTED TO: Melissa R. Marsh, City Manager

SUBMITTED BY: Larry Sherman, City Attorney DATE: 05/03/22

FOR CONSIDERATION AT THE COUNCIL MEETING OF: 05/09/22

ACTION REQUESTED

PRESENTATION _____	FUTURE PUBLIC HEARING _____
PUBLIC HEARING – SPECIAL APPROVAL _____	BID AWARDS / PURCHASES _____
PUBLIC HEARING – OTHER _____	ORDINANCE - FIRST _____
COMMUNICATION _____	ORDINANCE - SECOND _____
REPORT _____ ✓ _____	OLD BUSINESS _____

DESCRIPTION OF ITEM

Offer to Purchase Madison Heights Active Adult Center - 29448 John R Road

IF ORDINANCE, CITE TITLE/CHAPTER SECTIONS

POLICY CONSIDERATION

See attached.

FINANCIAL IMPACT

No Impact _____	Fee Waiver Proposed _____
Budgeted Fund Name(s) _____	Department Name _____
Appropriated in Acct. No. _____	Budget Amount _____
Amount Available in Acct. <u>0</u>	
Second Account Number _____	Budget Amount _____
Amount Available in 2 nd Acct. _____	Revenue Generated <u>\$1,850,000</u>
Other Comments _____	

REVIEW CHECKLIST

DEPARTMENT	<u>Larry Sherman, City Attorney</u>	DATE	<u>05/03/22</u>
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DEPARTMENT	_____	DATE	_____
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CITY MANAGER	<u>Melissa R.Marsh, City Manager</u>	DATE	<u>05/03/22</u>
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Sherman & Sherman, P.C.

30700 Telegraph Road, Suite 3420
Bingham Farms, MI 48025-4590
(248) 540-3366 Telephone
(248) 540-5959 Fax

Larry H. Sherman
Jeffrey A. Sherman
Tim Burns

May 3, 2022

VIA EMAIL ONLY

Honorable Roslyn Grafstein
and Members of the City Council
City of Madison Heights
300 West Thirteen Mile Road
Madison Heights, MI 48071

RE: Offer to Purchase Madison Heights Adult Activity Center – 29448 John R Road

Dear Mayor Grafstein and Members of City Council:

On March 18, 2022, the City received an Offer to Purchase (“Offer”) from MMD Acquisition, LLC (“MMD”) through our broker, Larry Campbell of Century 21 Campbell Realty, Inc. for the purchase of the Madison Heights Adult Activity Center at 29448 John R (“Adult Center”). I have requested that this item be placed on the May 9, 2022 Regular Council Meeting Agenda for consideration and action by City Council. A copy of the Agreement is attached for your review.

The salient economic terms of the Offer are as follows:

- **Sale Price** - \$1,850,000
- **Good Faith Deposit** - \$50,000 to be delivered to Escrow Agent within three (3) business days after executing the Offer and within three (3) business days after expiration of the initial Due Diligence Period, an additional non-refundable deposit of \$50,000, if MMD has not terminated the Agreement.
- **Due Diligence Period** – 210 days from execution of the Offer with MMD’s right to extend the initial Due Diligence period for up to an additional 60 days, if necessary, for MMD to obtain the necessary permits and approvals for MMD’s intended use. After the 210 day initial Due Diligence period, the first \$50,000 good faith deposit shall become non-refundable except in the event of the City’s Default or for other reasons specified in the Offer.
- **Closing** - Shall take place 30 days after the last day of the Due Diligence Period unless MMD waives the full Due Diligence period and elects to close earlier by providing written notice to the City.

LAW OFFICES
Sherman & Sherman, P.C.

Mayor Roslyn Grafstein
and Members of City Council
May 3, 2022
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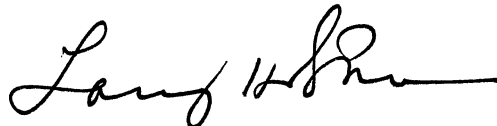
- **MMD's Right to Terminate** - MMD shall have the unconditional right, for any reason or no reason to terminate the Agreement by giving written notice to the City prior to the expiration of the Due Diligence period, as may be extended; in which case, the Agreement shall become null and void and the good faith deposit shall be returned to MMD if terminated prior to the expiration of the initial Due Diligence period.
- **City's Right to Occupy** - The City shall be permitted to remain in possession of the Adult Center from the date of Closing until August 31, 2023, in order to permit our residents to continue to utilize the facility, unless sooner terminated by MMD in accordance with the Agreement. A post-closing occupancy rate of \$250 per day shall be paid by the City to MMD for the first 180 days following the Closing. At that point, if the new Adult Center on the Civic Center Complex is not completed and the City desires to keep the existing Adult Center open, then the City shall pay to MMD, as compensation for occupying the property, a rate of \$400 per day until the City vacates the property.

The City Manager and I recommend that Council accept the offer. If Council concurs, appropriate action would be for Council to accept the offer from MMD Acquisition, LLC and authorize the City Manager, Melissa Marsh, to execute the Offer to Purchase together with any and all necessary additional documentation.

If you have any questions, please do not hesitate to contact Melissa or me.

Sincerely yours,

SHERMAN & SHERMAN, P.C.



Larry H. Sherman
Madison Heights City Attorney

LHS/mgh

cc: Melissa Marsh, City Manager
Cheryl Rottmann, City Clerk
Larry Campbell, Broker

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
(29448 John R Road)

THIS AGREEMENT ("Agreement") is made and entered into as of the Effective Date by and between MMD ACQUISITIONS LLC ("Buyer"), and the CITY OF MADISON HEIGHTS ("Seller").

In consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Terms and Definitions.** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Broker"** shall mean Century 21 Campbell Realty Inc., acting as Seller's agent.

(b) **"Closing"** shall mean the consummation of the transaction contemplated herein, which shall occur, subject to any applicable extension periods set forth in this Agreement, on the date that is thirty (30) days after the last day of the Due Diligence Period (as defined herein) unless the Buyer waives the full Due Diligence Period and elects to close earlier by providing written notice thereof to Seller. The date of Closing is hereinafter referred to as the **"Closing Date."** Unless otherwise agreed by Seller and buyer, Closing shall occur at the Title Company.

(c) **Intentionally Omitted**

(d) **"Due Diligence Period"** shall mean the period beginning upon the Effective Date and extending until 11:59 PM EST on the date that is two hundred ten (210) days thereafter ("Initial Due Diligence Period"). Buyer shall have the right to extend the Due Diligence Period for up to sixty (60) additional days, if necessary, to obtain Buyer's Permits and Approvals (defined below), upon delivery to Seller of notice of such extension at any time prior to the expiration of the Initial Due Diligence Period and in which event the Earnest Money shall be non-refundable except in event of a Seller default or under Section 7 below, but applicable to the Purchase Price.

(e) **"Earnest Money"** shall mean Fifty Thousand and 00/100 Dollars (\$50,000.00) and delivered to Escrow Agent within three (3) business days after the Effective Date and within three (3) business days after the expiration of the Due Diligence Period, as may be extended, if Buyer has not terminated the Agreement, an additional non-refundable \$50,000 of Earnest Money shall be deposited with Escrow Agent. The Earnest Money shall be deposited by Buyer in escrow with Escrow Agent, to be applied as part payment of the Purchase Price at the time the sale is closed, or disbursed as agreed upon in accordance with the terms of this Agreement.

(f) **"Effective Date"** shall mean the date that is one (1) business day after the date of execution and delivery of this Agreement by both Seller and Buyer shall be the "Effective Date" of this Agreement.

(g) **"Escrow Agent"** shall mean ATA National Title Group LLC of 42651 Woodward, Bloomfield Hills, MI 48304 (Attention: John R. Cook, 248-454-9743 (JCook@seavertitle.com) ("Title Company"). The parties agree that the Escrow Agent shall be responsible for (x) organizing the issuance of the Commitment and Title Policy, (y) preparation of the closing statement, and (z) collections and disbursement of the funds.

(h) **Intentionally Omitted**

(i) **"Property"** shall mean (a) that certain real property consisting of approximately 4.91 acres located at 29448 John R Road in Madison Heights, Michigan being more particularly described on Exhibit A, attached hereto and incorporated herein (the "Real Property") together with all buildings, facilities and

other improvements located thereon (collectively, the “Improvements”); (b) all right, title and interest of Seller in all equipment and items of personal property of Seller attached or appurtenant to, located on or used in the ownership, use, operation or maintenance of the Property or the Improvements (collectively, the “Personal Property”); (c) all right, title and interest of Seller, if any, to any unpaid award for (1) any taking or condemnation of the Property or any portion thereof, or (2) any damage to the Property or the Improvements by reason of a change of grade of any street or highway; (d) all easements, licenses, water rights, air rights, minerals and mineral rights, authorizations, consents and approvals, development rights, land division rights, that relates to and benefits the Real Property, and all other rights, tenements, hereditaments, privileges and appurtenances relating to the Real Property; (e) all records and documents relating to the Property and Personal Property, to the extent that such records are owned by Seller (collectively, the “Records”); and (f) all plans and reports, specifications, drawings, photographs, survey materials, engineering studies, environmental audits and assessments, wetland or woodland surveys, site plans, mineral searches or other materials pertaining to the condition, planning, development, construction, operation, use and enjoyment of the Property, if any, that are in Seller’s possession or control, including “working drawings” and “as-built drawings and surveys” (collectively the “Plans”). Property does not include any business assets of Seller located at the Property. All business assets and the personal property of Seller shall be removed by August 31, 2023 (“Post Closing Term”). Any business assets and personal property not removed at the expiration of the Post Closing Term shall be deemed abandoned by Seller. Seller to pay to Buyer the sum of \$250.00 per day for each day it occupies the Property after Closing for the first 180 days and thereafter at the rate of \$400 per day together with all utilities at the Property, insurance for the contents of the Property, general liability insurance on the Property during the Post Closing Term, and otherwise comply with the Post Closing Occupancy Agreement, attached as Exhibit C.

(j) **“Purchase Price”** shall mean One Million Eight Hundred Fifty Thousand and NO/100 Dollars (\$1,850,000.00).

(k) **Seller and Buyer’s Notice address**

(i) **“Seller’s Notice Address”** shall be as follows, except as same may be changed pursuant to the Notice section herein:

City of Madison Heights Melissa Marsh, City Manager 300 W 13 Mile Road Madison Heights MI 48071 Tel. No.: (248) 583-0829 Email: melissamarsh@madison-heights.org	And to:	Larry H. Sherman Sherman & Sherman, PC 30700 Telegraph Road, Ste 3420 Bingham Farms MI 480258 Tel. No.: (248) 540-3366 Email: larryhsherman@shermanpc.com
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(ii) **“Buyer’s Notice Address”** shall be as follows, except as same may be changed pursuant to the Notice section herein:

MMD Acquisitions LLC 28454 Woodward Avenue Royal Oak, Michigan 48067 Tel. No.: (313) 580-2261 Fax No.: (313) 202-2305 Email: niko@mmdco.com	And to:	Michael J. Thomas Shaheen, Jacobs & Ross, P.C. 615 Griswold Street, Suite 1425 Detroit, Michigan 48226 Tel. No.: (313) 963-1301 Fax No.: (313) 963-1312 Email: mthomas@sjrlaw.com
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2. **Purchase and Sale of the Property.** Subject to the terms of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property for the Purchase Price.

3. **Payment of Purchase Price.** The Purchase Price to be paid by Buyer to Seller shall be paid by wire transfer of immediately available funds in the amount of the Purchase Price plus or minus prorations, credits and adjustments as provided in Section 4 and elsewhere in this Agreement to Escrow Agent, at the time of Closing, or as otherwise agreed to between Buyer and Seller.

4. **Proration of Expenses and Payment of Costs and Recording Fees.**

(a) Seller shall pay all real property taxes, rollback taxes, personal property taxes, if any, water and sewer use charges and any other charges and assessments that are due and payable by the date of the Closing. Buyer shall pay all real property taxes that are due and payable after the date of the Closing. Seller shall satisfy all assessments that are levied against the Property on or before the date of the Closing, whether due in installments or otherwise, at or before the Closing, without proration such that there shall be no continuing assessments after Closing that were assessed prior to Closing.

(b) Seller shall pay or be charged with the following costs and expenses in connection with this transaction which costs shall be referred to as "Seller's Closing Costs":

(i) 100% of the Owner's Title Insurance Policy premiums, including search costs, but excluding any other endorsements issued in connection with such policies other than endorsements that Seller elects to purchase to cover title issues, if any;

(ii) Any transfer taxes and conveyance fees on the sale and transfer of the Property unless Seller is exempt;

(iii) Broker's commission payments, in accordance with Section 23 of this Agreement;

(iv) All fees relating to the granting and executing the Deed for the Property and recording fees for documents providing for the release of the applicable Property from any existing Seller debt.

(c) Buyer shall pay or be charged with the following costs and expenses in connection with this transaction, which costs shall be referred to as "Buyer's Closing Costs":

(i) Title Insurance policy premiums for any endorsements issued in connection with such policies other than endorsements that Seller elects to purchase to cover title issues, if any;

(ii) Buyer shall pay for the cost of its own survey, environmental assessments and due diligence investigations; and

(iii) Buyer shall pay cost to record the Deed (excluding transfer taxes, if any).

(d) Each party shall pay its own legal fees incidental to the negotiation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and one-half of the reasonable escrow and closing fees of the Escrow Agent.

5. **Title.** At Closing, Seller agrees to convey to Buyer fee simple marketable title to the Property by covenant deed, free and clear of all liens, defects of title, conditions, easements, assessments, restrictions, and encumbrances except for Permitted Exceptions (as hereinafter defined). Upon the expiration of the Post Closing Term, Buyer shall receive possession of the Property free and clear of all occupants and/or tenants. Seller and Buyer shall enter into the Post Closing Occupancy Agreement setting forth the parties expectations.

6. **Examination of Property.** Seller and Buyer hereby agree as follows:

(a) Buyer shall order a title commitment (the "**Title Commitment**") from Escrow Agent, a survey and a zoning report for the Property promptly after the date hereof. The Title Commitment shall also commit, at Seller's expense, to delete the so called standard exceptions relative to possession,

construction liens and boundary claims and provide title endorsements, to remove the same, at Seller's cost. At Closing Seller shall cause Title Company to issue a current ALTA owner's form of title insurance policy without standard exceptions, for the Real Property in the amount of the Purchase Price, dated, or updated to, the date of the Closing, insuring, or committing to insure Buyer's good and marketable title in fee simple to the Real Property and otherwise in such form and with such endorsements as provided in the title commitment approved by Buyer and subject only to the Permitted Exceptions (the "**Title Policy**"). All matters shown in the Title Commitment, survey or zoning report ("**Title Matters**") with respect to which Buyer fails to object prior to forty five (45) days after the Effective Date, shall be deemed "**Permitted Exceptions**". However, Permitted Exceptions shall not include any mechanic's lien or any monetary lien, or any mortgage, or other loan documents secured by the Property, (collectively, "**Liens**"). Seller shall be required to cure or remove all Liens (by payment, bond deposit or indemnity acceptable to Escrow Agent and Buyer). Seller shall have no obligation to cure any Title Matter objected to, except as aforesaid, provided Seller notifies Buyer of any objections which Seller elects not to remove or cure within five (5) business days following receipt of Buyer's objections. In the event that Seller refuses to remove or cure any objections, Buyer shall have the right upon written notice to Seller given within ten (10) business days after receipt of Seller's notice, to either: (1) terminate this Agreement and promptly receive a return of the Earnest Money without further action of the parties (thereafter the rights and obligations of the parties hereunder shall terminate); or (2) waive the objections and accept title to the Property subject to the objected items. Notwithstanding anything herein to the contrary, Seller shall pay at closing from the Purchase Price all mortgages and encumbrances, if any, recorded against the Property together with all taxes required hereunder, if any. In the event that Buyer has failed to elect, in writing, either option under subsections (1) and (2) above, then Buyer shall be deemed to have elected option 2. If any matter not revealed in the Title Commitment is discovered by Buyer or by the Escrow Agent and is added to the Title Commitment by the Escrow Agent at or prior to Closing, Buyer shall have until the date of Closing, to provide Seller with written notice of its objection to any such new title exception.

(b) Within twenty one (21) days following the Effective Date, Seller shall provide to Buyer copies of the documents and materials set forth on Exhibit F pertaining to the Property to the extent within Seller's possession or reasonably obtainable by Seller or Seller's counsel (all of said documents and materials (the "**Due Diligence Materials**"). Seller shall deliver any other documents relating to the Property reasonably requested by Buyer, to the extent within Seller's possession or reasonably obtainable by Seller or Seller's counsel, within fourteen (14) days following such request. Additionally, during the term of this Agreement, Buyer, its agents and designees, shall have the right to perform whatever due diligence that Buyer deems necessary, including but not limited to, seeking site plan and other governmental approvals for Buyer's proposed development, financial feasibility and the right to enter the Property for the purposes of inspecting the Property, conducting soil tests, and making surveys, mechanical and structural engineering studies, inspecting construction, and conducting any other investigations and inspections as Buyer may reasonably require to assess the condition and suitability of the Property; provided, however, that Buyer shall indemnify and hold Seller harmless from and against any and all claims or damages to the extent resulting from the activities of Buyer on the Property, and Buyer shall repair any and all damage caused, in whole or in part, by Buyer and return the Property to its condition prior to such damage, which obligation shall survive Closing or any termination of this Agreement. Seller shall reasonably cooperate with the efforts of Buyer and the Buyer's representatives to inspect the Property. Upon signing this Agreement, Seller shall provide Buyer with the name of a contact person(s) for the purpose of arranging site visits.

(c) During the Initial Due Diligence Period, Buyer may seek to obtain all necessary entitlements, permits and approvals from applicable governmental authorities and utility companies/authorities (including any necessary utility easements and/or utility agreements) for the development of the Property on terms and conditions acceptable to Buyer in Buyer's sole discretion (collectively, "Buyer's Permits and Approvals"). Seller agrees to cooperate with Buyer and use Seller's reasonable efforts in furtherance of and in connection with any and all applications of Buyer relating in any manner whatsoever to the development of the Property. If necessary, upon the Buyer's request, Seller

agrees to sign, execute and deliver as the current owner, any and all credible documents that may be required to be signed by the current owner to gain any governmental and utility approvals desired or required by Buyer (provided, however, Seller shall not be obligated to incur any costs or expenses or any continuing obligations as a result of any such documents).

(d) Buyer shall have the unconditional right, for any reason or no reason, to terminate this Agreement by giving written notice thereof to Seller and the Escrow Agent prior to the expiration of the Due Diligence Period, as may be extended, in which event this Agreement shall become null and void, the Earnest Money shall be returned to Buyer if Buyer terminated prior to the expiration of the Initial Due Diligence Period, and all rights, liabilities and obligations of the parties under this Agreement shall expire, except as otherwise expressly set forth herein. If Buyer elects to extend the Due Diligence Period, then the Earnest Money shall be non-refundable to Buyer, except in the event of a default by Seller or under Section 7 below.

(e) Seller shall use good faith efforts to obtain estoppel certificates with respect to reciprocal easement agreements, if any, as may be reasonably requested by Buyer.

7. **Risk of Loss/Condemnation.** Upon an occurrence of a casualty, condemnation or taking, Seller shall notify Buyer in writing of same. Until Closing, the risk of loss or damage to the Property, except as otherwise expressly provided herein, shall be borne by Seller. In the event all or any portion of the Property is damaged in any casualty or condemned or taken (or notice of any condemnation or taking is issued), then, Buyer may elect to terminate this Agreement by providing written notice of such termination to Seller within ten (10) business days after Buyer's receipt of notice of such condemnation, taking or damage, upon which termination the Earnest Money shall be returned to the Buyer and neither party hereto shall have any further rights, obligations or liabilities under this Agreement, except as otherwise expressly set forth herein. With respect to any condemnation or taking (of any notice thereof), if Buyer does not elect to cancel this Agreement as aforesaid, there shall be no abatement of the Purchase Price and Seller shall assign to Buyer at the Closing the rights of Seller to the awards, if any, for the condemnation or taking, and Buyer shall be entitled to receive and keep all such awards. With respect to a casualty, if Buyer does not elect to terminate this Agreement or does not have the right to terminate this Agreement as aforesaid, there shall be no abatement of the Purchase Price and Seller shall assign to Buyer at the Closing the rights of Seller to the proceeds under Seller's insurance policies covering such Property with respect to such damage or destruction (or pay to Buyer any such proceeds received prior to Closing) and pay to Buyer the amount of any deductible with respect thereto, and Buyer shall be entitled to receive and keep any monies received from such insurance policies.

8. **Intentionally Omitted.**

9. **Default**

(a) In the event of a default by Buyer, Seller shall be entitled to, as its sole and exclusive remedy (after written notice of default to Buyer specifying the nature of such default(s) and the failure of Buyer to cure such default(s) within ten (10) days after such notice), declare this Agreement to be terminated, and Seller shall be entitled to immediately receive all of the Earnest Money as liquidated damages as and for Seller's sole remedy. Upon such termination, neither Buyer nor Seller shall have any further rights, obligations or liabilities hereunder, except as otherwise expressly provided herein. Seller and Buyer agree that actual damages due to Buyer's default hereunder would be difficult and inconvenient to ascertain and that such amount is not a penalty and is fair and reasonable in light of all relevant circumstances. Seller hereby waives any right to recover the balance of the Purchase Price, or any part thereof, and the right to pursue any other remedy permitted at law or in equity against Buyer.

(b) In the event of a default by Seller, Buyer may, as its sole and exclusive remedy (after written notice of default to Seller specifying the nature of such default(s) and the failure of Seller to cure

such default(s) within ten (10) days after such notice), either: (i) waive any unsatisfied conditions and proceed to Closing in accordance with the terms and provisions hereof; (ii) terminate this Agreement by delivering written notice thereof to Seller no later than Closing, upon which termination the Earnest Money shall be refunded to Buyer; or (iii) enforce specific performance of Seller's obligations hereunder.

Notwithstanding the foregoing, in the event of a willful or intentional default of Seller hereunder which would prevent the relief of specific performance, Buyer shall, in addition to the foregoing remedies, be permitted to pursue any and all rights and remedies available to Buyer at law or in equity; provided, however, in no event shall Seller be liable to Buyer for any punitive or speculative damages .

10. **Closing.** The Closing shall consist of the execution and delivery of documents by Seller and Buyer, as set forth below, and delivery by Buyer to Seller of the Purchase Price in accordance with the terms of this Agreement. Seller shall deliver to Escrow Agent for the benefit of Buyer at Closing the following executed documents:

- (a) A Covenant Deed in the form attached hereto as Exhibit B with an accompanying Real Estate Transfer Tax Valuation Affidavit;
- (b) A Bill of Sale for the Personal Property, if any, in the Title Company's customary form;
- (c) An Assignment of Contracts, Permits, Licenses and Warranties pertaining to the Property, if applicable, in form acceptable to Buyer and originals of any warranties, if any;
- (d) A settlement statement setting forth the Purchase Price, all prorations and other adjustments to be made pursuant to the terms hereof, and the funds required for Closing as contemplated hereunder and a paid receipt for water from the municipal authority responsible for water bills together with a water escrow agreement funded at closing by Seller in the amount of \$1,500;
- (e) All transfer tax statements, declarations and filings as may be necessary or appropriate for purposes of recordation of the deed;
- (f) Good standing certificates, City Council approval and minutes and/or resolutions, as applicable, and such other documents as reasonably requested by Escrow Agent;
- (g) A certificate pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued pursuant thereto, certifying the non-foreign status of Seller;
- (h) An owner's title affidavit as to mechanics' liens and possession and other matters in customary form reasonably acceptable to Buyer and Escrow Agent in order to issue the Title Policy without standard exceptions;
- (i) Post-Closing Occupancy Agreement executed by Seller and Buyer; and
- (j) Such other instruments as are reasonably required by Escrow Agent to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

Prior to any Closing, Buyer shall deliver to Seller a fully executed Release of Seller from any and all environmental liabilities or obligations related to or arising from the Property, except for any Seller fraud or misrepresentation.

At Closing, Buyer shall instruct Escrow Agent to deliver the Earnest Money to Seller which shall be applied to the Purchase Price, shall deliver the balance of the Purchase Price to Seller and shall execute and deliver execution counterparts of the closing documents referenced in clauses (b), (d) and (i) above. Buyer shall have the right to advance the Closing upon ten (10) days prior written notice to Seller; provided that all conditions precedent to both Buyer's and Seller's respective obligations to proceed with Closing under this Agreement have been satisfied (or, if there are conditions to a party's obligation to proceed with Closing that remain unsatisfied, such conditions have been waived by such party). The Closing shall be held through the mail by delivery of the closing documents to the Escrow Agent on or prior to the Closing or such other place or manner as the parties hereto may mutually agree.

11. **Representations by Seller.** For the purpose of inducing Buyer to enter into this Agreement and to consummate the sale and purchase of the Property in accordance herewith, Seller makes

the following representations and warranties to Buyer as of the date hereof. Seller shall similarly advise Buyer of any material change that it becomes aware of between the date hereof and the Closing Date:

(a) Seller is a municipal governmental entity operating as a subdivision of the State of Michigan and to the extent required by law, the State in which the Property is located. Seller has the power and authority to execute and deliver this Agreement and all closing documents to be executed by Seller, and to perform all of Seller's obligations hereunder and thereunder. Neither the execution and delivery of this Agreement and all closing documents to be executed by Seller, nor the performance of the obligations of Seller hereunder or thereunder will result in the violation of any law or any provision of the organizational documents of Seller or will conflict with any order or decree of any court or governmental instrumentality of any nature by which Seller is bound;

(b) Seller has not received any written notice of any current or pending litigation, condemnation proceeding or tax appeals affecting the Property and Seller does not have any knowledge of any pending litigation or tax appeals against the Property; Seller has not initiated, nor is Seller participating in, any action for a change or modification in the current subdivision, site plan, zoning or other land use permits for the Property;

(c) Except for Paragraph 11 of the May 30, 2008 "Easement For Ingress and Egress" and the unexecuted January 30, 2003 "Remedial Action Plan" cited therein, Seller has not entered into any contracts, subcontracts or agreements affecting the Property which will be binding upon Buyer after the Closing. At Closing, the Property shall not be subject to any claim of lien or special assessment, either recorded or unrecorded, and no improvements to or upon the Property shall be made within 120 days prior to the Closing Date which could give rise to a claim of lien or special assessment;

(d) Except for violations cured or remedied on or before the date hereof, Seller has not received any written notice from (or delivered any notice to) any governmental authority regarding any violation of any law applicable to the Property and Seller does not have knowledge of any such violations;

(e) Seller has fee simple title to the Property, and as of the Closing, such title will be free and clear of all liens and encumbrances except for Permitted Exceptions. The Property constitutes one or more separate tax parcels for purposes of ad valorem taxation;

(f) To the best of Seller's information, knowledge, and belief, except for the unexecuted January 30, 2003 "Remedial Action Plan" enumerated in Paragraph 11 of the May 30, 2008 "Easement For Ingress and Egress", the Property is not subject to any unrecorded liens, assessments, encumbrances, restrictions, easements, boundary disputes, or agreements or other matters not of record. There are no occupancy rights, leases or tenancies affecting the Property. Neither this Agreement nor the consummation of the transactions contemplated hereby is subject to any first right of refusal or other purchase right in favor of any other person or entity; and apart from this Agreement, Seller has not entered into any written agreements for the purchase or sale of the Property, or any interest therein which has not been terminated;

(g) To the best of Seller's information, knowledge, and belief, except for the reported presence of waste fill on the Property and except as set forth in the environmental reports delivered by Seller to Buyer including the unexecuted Remedial Action Plan dated January 30, 2003, no hazardous substances have been generated, stored, released, or disposed of on or about the Property in violation of any law, rule or regulation applicable to the Property which regulates or controls matters relating to the environment or public health or safety (collectively, "Environmental Laws"). Seller has not received any written notice from (nor delivered any notice to) any federal, state, county, municipal or other governmental department, agency or authority concerning any petroleum product or other hazardous substance discharge or seepage. For purposes of this Subsection, "hazardous substances" shall mean any substance or material which is defined or deemed to be hazardous or toxic pursuant to any Environmental Laws;

(h) To the best of Seller's information, knowledge, and belief, the Property does not contain any gas wells or other wells, underground storage tanks, or sink holes (as defined under federal, state or local law);

(i) A true, correct and complete listing of all warranties, if any, in effect for the Property (the "**Warranties**") will be delivered to Buyer by Seller; and

(j) Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as defined in the Internal Revenue Code) and Seller will so certify on the date of Closing.

The representations and warranties of Seller shall survive Closing.

12. **Representations by Buyer.** Buyer represents and warrants to, and covenants with, Seller as follows:

(a) Buyer is duly formed, validly existing and in good standing under the laws of Michigan, is authorized to consummate the transaction set forth herein and fulfill all of its obligations hereunder and under all closing documents to be executed by Buyer, and has all necessary power to execute and deliver this Agreement, and to perform all of Buyer's obligations hereunder and thereunder. This Agreement has been duly authorized by all requisite corporate or other required action on the part of Buyer and is the valid and legally binding obligation of Buyer, enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement, nor the performance of the obligations of Buyer hereunder or thereunder will result in the violation of any law or any provision of the organizational documents of Buyer or will conflict with any order or decree of any court or governmental instrumentality of any nature by which Buyer is bound.

(b) Buyer acknowledges that contamination of the Property has been disclosed in the unexecuted, proposed January 30, 2003 "Remedial Action Plan". Buyer agrees that such contamination shall be managed by Buyer according to all applicable State of Michigan requirements.

(c) The representations and warranties of Buyer shall survive Closing.

13. **Conditions Precedent to Buyer's Obligations.** Buyer's obligation to pay the Purchase Price, and to accept title to the Property, shall be subject to compliance by Seller with the following conditions precedent on and as of the date of Closing, which may be waived in writing in Buyer's sole discretion:

(a) Seller shall deliver to Buyer on or before the Closing the items set forth in Section 10 above;

(b) Buyer shall receive from Escrow Agent or any other title insurer approved by Buyer in its judgment and discretion, a current ALTA owner's form of title insurance policy without standard exceptions, for the Real Property in the amount of the Purchase Price, dated, or updated to, the date of the Closing, insuring, or committing to insure Buyer's good and marketable title in fee simple to the Real Property and otherwise in such form and with such endorsements as provided in the title commitment approved by Buyer pursuant to Section 6 hereof and subject only to the Permitted Exceptions (the "Title Policy"); and

(c) The representations and warranties of Seller contained in this Agreement shall have been true when made and shall be true in all material respects at and as of the date of Closing as if such representations and warranties were made at and as of Closing, and Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing.

In the event that any of the foregoing condition precedent have not been satisfied as of Closing, Buyer shall have, in its sole discretion, the right, in addition to all other remedies under this Agreement, to terminate this Agreement by delivering written notice thereof to Seller no later than that date which is fifteen (15) days after the date scheduled for Closing, upon which termination the Earnest Money shall be refunded to Buyer.

14. **Conditions Precedent to Seller's Obligations.** Seller's obligation to deliver title to the Property shall be subject to compliance by Buyer with the following conditions precedent on and as of the date of Closing:

(a) Buyer shall deliver to Escrow Agent on the Closing Date the remainder of the Purchase Price, subject to adjustment of such amount pursuant to Section 2 hereof; and

(b) The representations and warranties of Buyer contained in this Agreement shall have been true when made and shall be true in all material respects at and as of the date of Closing as if such representations and warranties were made at and as of the Closing, and Buyer shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing.

15. **Notices.** Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date: (i) delivered by electronic mail (e.g. email), (ii) delivered in person, (iii) deposited in the United States mail, registered or certified, return receipt requested, or (iv) deposited with a nationally recognized overnight courier, to the addresses set out in Section 1, or at such other addresses as specified by written notice delivered in accordance herewith. Notwithstanding the foregoing, Seller and Buyer agree that notice may be given on behalf of each party by the counsel for each party and notice by such counsel in accordance with this Section 15 shall constitute notice under this Agreement.

16. **Operation of Property Pending Closing.** Seller agrees that it: (a) shall continue to operate and manage the Property in the same manner in which Seller has previously operated and managed the Property; (b) shall, subject to Section 7 hereof, any governmental order or directive and reasonable wear and tear, maintain the Property in the same condition as exists on the date hereof; and (c) shall not, without Buyer's prior written consent, which may be withheld in Buyer's sole discretion: (i) enter into any lease, license agreement or other agreement with respect to the Property which will continue beyond Closing; and/or (ii) cause, permit or consent to an alteration of the premises demised thereunder (unless such consent is non-discretionary). Seller shall promptly inform Buyer in writing of any material event adversely affecting the ownership, use, occupancy or maintenance of the Property, whether insured or not.

17. **Performance on Business Days.** A "business day" is a day which is not a Saturday, Sunday or legal holiday recognized by the Federal Government. Furthermore, if any date upon which or by which action is required under this Agreement is not a business day, then the date for such action shall be extended to the first day that is after such date and is a business day.

18. **Entire Agreement/Survival.** This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. No prior agreement or understanding pertaining to the subject matter hereof shall be valid or of any force or effect from and after the date hereof. This Agreement shall survive all documents of closing and is enforceable despite the exchange of deed and other documents of title as called for herein.

19. **Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable, at any time or to any extent, then the remainder of this

Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law

20. **AS-IS Purchase.** Buyer hereby acknowledges, understands and agrees that it has an opportunity to inspect the Property as set forth in Section 6 herein, and except as set forth in this Agreement and documents delivered at Closing, the Property shall be conveyed at Closing to Buyer in “as-is” condition with no representation or warranties whatsoever.

21. **Applicable Law.** This Agreement shall be construed under the laws of the State of Michigan, without giving effect to any state's conflict of laws principles.

22. **Tax-Deferred Exchange.** Either party may consummate this transaction as part of a tax free exchange in accordance with Section 1031 of the Internal Revenue Code of 1986, as amended. Both parties shall reasonably cooperate with each other in connection therewith provided there shall be no cost or liability to the party not effectuating the tax free exchange.

23. **Broker's Commissions.** Buyer and Seller each hereby represent that, except for the Broker listed herein, there are no other brokers involved or that have a right to proceeds in this transaction. Seller shall be responsible for payment of commissions to the Broker pursuant to a separate written agreement executed by Seller. Seller and Buyer each hereby agree to indemnify and hold the other harmless from all loss, cost, damage or expense (including reasonable attorneys' fees) incurred by the other as a result of any claim arising out of the acts of the indemnifying party (or others on its behalf) for a commission, finder's fee or similar compensation made by any broker, finder or any party who claims to have dealt with such party (except that Buyer shall have no obligations hereunder with respect to any claim by Broker). The representations, warranties and indemnity obligations contained in this section shall survive the Closing or the earlier termination of this Agreement.

24. **Assignment.** Buyer may freely assign its rights under this Agreement to a related entity upon written notice to Seller, together with a copy of such assignment and assumption by the assignee, provided that Buyer shall not be relieved of its obligations under this Agreement until after Closing, otherwise Buyer may assign with Seller's consent, which consent shall not be unreasonable withheld, conditioned or delayed. Seller may not assign this Agreement unless it is in connection with a sale of substantially all assets of Seller.

25. **Attorneys' Fees.** In any action between Buyer and Seller as a result of failure to perform or a default under this Agreement, the prevailing party shall be entitled to recover from the other party, and the other party shall pay to the prevailing party, the prevailing party's reasonable attorneys' fees and disbursements and court costs incurred in such action.

26. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other party. Signatures on this Agreement which are transmitted by electronically shall be valid for all purposes, however any party shall deliver an original signature on this Agreement to the other party upon request.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BUYER:

MMD ACQUISITION LLC

SELLER:

CITY OF MADISON HEIGHTS

By: _____

Name: Nikolaos Moschouris

Title: Manager

Date: _____

By: _____

Name: Melissa Marsh

Title: City Manager, City of Madison Heights

Date: _____

EXHIBITS

- Exhibit A - Real Property
- Exhibit B - Form of Covenant Deed
- Exhibit C - Post-Closing Occupancy Agreement
- Exhibit D - Intentionally Omitted
- Exhibit E - Intentionally Omitted
- Exhibit F - Due Diligence Materials

EXHIBIT A

**LEGAL DESCRIPTION OF PROPERTY
SUBJECT TO VERIFICATION BY CERTIFIED SURVEY AND TITLE
COMMITMENT**

The land referred to in this commitment is described as follows: City of Madison Heights, County of Oakland, State of Michigan

North 3 acres of the South 6 acres of Northwest 1/4 of Southwest 1/4 EXCEPT East 690 feet, also part of the Northwest 1/4 of Southwest 1/4 beginning at Southwest Section corner, Section 12, Town 1 North, Range 11 East, City of Madison Heights, Oakland County, Michigan; thence East 672.60 feet; thence North 95.90 feet; thence West 672.20 feet; thence North 95.90 feet to beginning, also part of Southwest 1/4 of Southwest 1/4 beginning at point distant North 00 degrees 10 minutes 00 seconds East, 1205.19 feet from Southwest Section corner; thence North 00 degrees 10 minutes 00 seconds East 80.39 feet; thence South 89 degrees 29 minutes 00 seconds East, 1374.18 feet; thence South 00 degrees 26 minutes 00 seconds West 79.89 feet; thence North 89 degrees 58 minutes 00 seconds West 1373.81 feet to beginning,

EXCEPT West 60 feet of each taken for Road, ALSO EXCEPT part of the Southwest 1/4 beginning at point distant South 00 degrees 02 minutes 18 seconds West 1161.72 feet and South 89 degrees 51 minutes 16 seconds East 60 feet from West 1/4 corner; thence South 89 degrees 51 minutes 16 seconds East 613.92 feet; thence South 00 degrees 18 minutes 28 seconds East 14.24 feet; thence North 89 degrees 50 minutes 41 seconds West 614 feet; thence North 00 degrees 02 minutes 18 seconds East 14.14 feet to beginning.

EXHIBIT B

FORM OF

COVENANT DEED

_____ (“**Grantor**”), whose address is _____, hereby
sells, conveys, grants, and bargains to _____ (“**Grantee**”), whose address is
_____, the premises situated in the City of _____, County of _____,
State of Michigan, more specifically described as:

See Exhibit “A” hereto

together with all of Grantor’s right, title and interest in and to all improvements, fixtures, easements, and appurtenances associated with such real estate (the “**Property**”), for the sum set forth on the Real Estate Transfer Tax Valuation Affidavit filed herewith.

Grantor, for itself, its successors and assigns, covenants, grants, bargains, and agrees to and with Grantee, its successors and assigns, that, subject to the exceptions set forth on Exhibit B hereto, Grantor has not done, committed or knowingly suffered to be done or committed any act, matter, or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, or shall or may be, charged or encumbered in title, estate or otherwise.

If the land being conveyed is unplatted, the following is deemed to be included:

Grantor grants to Grantee the right to make all divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended.

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

[Signature page follows]

[SIGNATURE PAGE TO COVENANT DEED]

IN WITNESS WHEREOF, Grantor has caused this Covenant Deed to be executed and delivered
as of _____ 2022.

GRANTOR:

By: _____

Name: _____

Its: _____

STATE OF MICHIGAN)

_____ COUNTY)

The foregoing instrument was acknowledged before me on _____,
by _____,

the _____, (title of authorized signer) of
_____, a on the entity's behalf.

(Name of notary, typed or printed in black ink)

Notary Public, _____ County

Acting in _____ County

My commission expires _____.

When recorded return to:
Grantee

Send subsequent tax bills to:
Grantee

Drafted by:
Grantor

Tax Parcel

Exhibit A

Legal Description

Exhibit B

Permitted Exceptions

EXHIBIT C

POST-CLOSING OCCUPANCY AGREEMENT

THIS POST-CLOSING OCCUPANCY AGREEMENT (the "Agreement") is made this ____ day of _____, 2022, by and between MMD Acquisitions LLC, a Michigan limited liability company, at 28454 Woodward Avenue, Royal Oak, Michigan 48067 ("Buyer"), and City of Madison Heights, residing at 300 W 13 Mile Road, Madison Heights, MI 48071 ("Seller").

WHEREAS, Seller and Buyer have entered into an Agreement For Purchase And Sale Of Real Property dated _____, 2022 (the "Contract") for certain property set forth in the Contract (the "Property") providing that the closing is to occur on the date set forth in the Contract; and

WHEREAS, Seller wishes to retain, and Buyer has agreed to permit Seller to have, possession of the Property subsequent to the Closing upon the terms and conditions herein described.

NOW THEREFORE, for good and valuable consideration, Seller and Buyer covenant and agree as follows:

1. **No Landlord-Tenant Relationship.** This Agreement does not create a Landlord-Tenant relationship between Seller and Buyer.
2. **Possession.** Upon full execution of this Agreement, Seller shall be permitted to remain in possession of the Property ("Possession") from the actual date of closing (the "Closing Date"), until August 31, 2023, unless sooner terminated in accordance with this Agreement (the "Termination Date"). Seller may elect upon sixty (60) days prior written notice to Buyer, to elect to terminate occupancy early or to extend the occupancy and the Termination Date for a period of up to 60 days. The period of time from the Closing Date until the Termination Date as shortened or extended as provided herein, shall be referred to as the "Term". Nothing contained herein shall impose any duty on Buyer, whether express or implied, to permit Seller to remain in Possession after the Termination Date. Seller shall have no right to remain in Possession after the Termination Date
3. **Per day Occupancy Fee.** On the first day of the Term for any partial month and on the first day of each calendar month thereafter for the full month, Seller shall pay Buyer, in advance and without notice or offset, as compensation for occupying the Property, a post-closing occupancy fee ("PCOF") at the rate of \$250.00 per day it occupies the Property after Closing for the first 180 days and thereafter at the rate of \$400 per day during the Term.
4. **Buyer's Right of Inspection.** Seller shall vacate the Property on or before the Termination Date and upon sixty (60) days prior written notice to Buyer. For all the purposes of this Agreement, Seller shall not be deemed to have vacated the Property until Seller: (1) gives sixty (60) days written notice to Buyer; (2) delivers the Property to Buyer in substantially the same condition as existed on the Closing Date, reasonable wear and tear excepted; (3) deliver all keys to Buyer and (4) removes all of Seller's personal property from the Property. Buyer shall have the right to inspect the Property to ensure compliance with this Agreement (the "Final Inspection"). The Final Inspection shall take place on the Termination Date.
5. **Utilities and Other Expenses - Ordinary Maintenance and Repair.** Until Seller vacates the Property, Seller shall be responsible for and pay all utility charges and service contracts, including but not limited to all refuse collection, lawn, landscaping, snow removal, gas, electricity, telephone, water, and security system charges. Buyer shall not be liable for any loss or damage resulting from outages, interruptions or fluctuations in utilities.

6. **Compliance with Laws.** Seller shall comply with the requirements of all laws, orders, ordinances and regulations of any competent authority imposing any duty of Seller with respect to Seller's use or occupancy of the Property.

7. **Insurance.**

(a) Buyer shall obtain and maintain property and casualty insurance coverage on the Property. Seller acknowledges that its personal property is not insured under buyer's insurance coverage and Seller accepts full responsibility for any loss incurred.

(b) During the Term, Seller shall obtain and maintain comprehensive personal liability insurance against bodily injury and property damage with minimum limits of \$2,000,000. Seller shall deliver evidence of the foregoing coverage, and receipts evidencing payment of the premium for such coverages, to Buyer. The insurance policy required under this Section shall name Buyer as additional insured or as having an additional interest. The representations and obligations contained in this Section shall not merge and shall survive the transfer of title to the Property.

8. **Indemnification.** To the fullest extent permitted by applicable law, without regard to the lapse, cancellation, failure or disclaimer of the insurance policy(ies) referred to in Section 7 above, Seller shall indemnify Buyer from and against any and all liability and shall hold Buyer harmless from and shall pay any claims, damages, loss, cost or expense (including without limitation, reasonable legal fees and disbursements, court costs, the cost of appellate proceedings and any other reasonable costs of litigation) which Seller incurs arising out of or in connection with bodily injury or property damage occurring to any person or persons, including but not limited to Seller, its guests, licensees and invitees, occurring during the Term and within or on any portion of the Property, regardless of the cause, excepting only events of injury or damage caused by the willful misconduct or negligence of Buyer, Buyer's agents, contractors, employees, invitees, guests and permittees or by any environmental condition of the Property unless caused by Seller.

9. **Seller's Obligations.** Seller's obligations hereunder shall continue until they vacate the Property.

10. **Waiver of Jury Trial; No counterclaims or setoffs.** The parties mutually waive trial by jury in any action or proceeding commenced by them concerning the terms of this Agreement. In any proceeding by Buyer to obtain possession of the Property, Seller shall have no right to assert any counterclaims or setoffs.

11. **Miscellaneous.**

(a) This Agreement represents the complete agreement of the parties concerning the granting of post-closing occupancy of the Property to Seller. No oral agreements or promises will be binding. If any of the terms or conditions of this Agreement are for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms or conditions of this Agreement.

(b) The Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to principles of conflicts of laws.

(c) This Agreement shall inure to the benefit of the parties hereto and bind their respective heirs, successors and assigns, except as otherwise provided herein. The rights of possession hereunder are personal to Seller and may not be assigned, nor may the Property be sublet. Any assignment shall be absolutely null and void and constitute a breach of this Agreement such that Buyer shall, at Buyer's option, have the right to terminate this Agreement.

(d) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be transmitted electronically and the parties intend that electronically or facsimile transmitted signatures constitute original signatures and are binding on the parties.

IN WITNESS WHEREOF, the parties have hereunder set their hands as of the date(s) set forth below.

“Seller”:

By: [to be executed at Closing]

Its: _____

Dated: _____, 2022

“Buyer”:

By: [to be executed at Closing]

Its: _____

Dated: _____, 2022

EXHIBIT F

DUE DILIGENCE MATERIALS

Seller shall provide to Buyer copies of the following documents and materials pertaining to the Property to the extent within Seller's possession or reasonably obtainable by Seller or Seller's counsel:

- A copy of all surveys and site plans of the Property, including without limitation any as-built survey obtained or delivered to tenants of the Property in connection with its construction;
- A copy of all architectural plans and specifications and construction drawings and contracts for improvements located on the Property;
- A copy of Seller's title insurance commitments and prior policies relating to the Property;
- A copy of the certificate of occupancy (or local equivalent) and zoning reports for the Property; and of all governmental permits/approvals;
- A copy of all environmental, engineering and physical condition reports for the Property;
- Copies of the Property's real estate tax bills for the current and prior two (2) tax years or, if the Property has been owned by Seller for less than two (2) tax years, for the period of ownership;
- The operating statements of the Property for the twenty four (24) calendar months immediately preceding the Effective Date or if the Tenant has been operating for less than twenty-four (24) months, for the period of operation;
- Copies of all service contracts, utility bills and insurance policies which affect the Property, if any;
- A copy of all warranties relating to the improvements constructed on the Property, including without limitation any roof warranties; and
- A written inventory of all items of personal property to be conveyed to Buyer, if any