Chapter 7: Control Without Title— Lease/Options and Land Contracts

So far, the strategies we've discussed end, after closing, with you owning the property. Whether it's a seller-held mortgage and note, or a subject to deal, a new deed is prepared, and the seller conveys title to you, and you become the owner.

However, it's not necessary to "own" a property, in the sense of having your name on the deed, in order to secure and control some of the important benefits of "ownership," like cash flow, appreciation, mortgage pay down, or even tax benefits.

What You Risk When You Don't Have Title

Many Transactioneers, when they first hear about ways to make money, and get equity, and basically control most, or all, of the important benefits of owning property WITHOUT having to talk a seller into transferring title to a stranger, decide to focus solely on these methods of 'buying .' They think, "Wow, this has got to be a LOT easier to talk a seller into; it takes all the pressure out of the negotiation and gets me everything I want! I'm just gonna do this from now on!"

But there's a reason that Subject To and seller-held mortgage deals are more common than lease/option and land contract deals, at least on the 'buy side'—and it's not just that the other strategies are somewhat better known.

This reason has to do with the risks that come with leaving someone else in control of the title to a property that you think of as 'yours' . Imagine these scenarios, for instance:

- You have a 10-year time frame in which to pay off the property. During year 5, unbeknownst to you, the seller neglects to pay a $100,000 tax bill to the IRS. In year 7, the IRS attaches a lien to all of the seller's assets, including "your" property. By year 10, when you're supposed to have paid off the property and gotten title, the lien has increased to $250,000, which we can safely assume the seller can't pay off. If you take title, you take it subject to a quarter of a million in debt. If you don't take title, but continue to control the property, you risk the IRS auctioning off the property for payment. And getting the seller, who has no further money coming from the property in any case, to attempt to settle the debt and get the lien released, is unlikely to work: what motivation does he have to spend time and money fixing a problem 'for you'?

- Ditto liens from car accidents, unpaid credit card bills, unpaid child support, deficiency judgements…

- And those are just the INvoluntary liens. Imagine a seller who has lots of equity in "his" property, and convinces a private lender, or a bail bondsman, to let him use it as security for a loan. At the end of year 10, you ask for title, and find out that he's got a debt that he can't pay off, secured by your title.

- Or he runs into a cash flow crunch, and uses the payments you send him to pay his personal bills or feed his gambling habit, instead of paying the mortgage payment, or the taxes, or the insurance, and you find out about HIS foreclosure on YOUR property when the sheriff knocks on your tenant's door and says, 'move'.

- Or he dies during those 10 years, and his heirs find out that the property they've been looking forward to inheriting (because it's worth $200,000) is subject to a contract (with you) that they knew nothing about, and that contract allows you to buy it for half of its value, and they decide to claim that poor old dad was senile when he signed that contract, and that they'd rather sue you than give you the title he promised you.

- Or—and this has happened, a LOT, during times when prices were on a consistent upward trend—the seller decides after 10 years that he made a bad deal by agreeing to sell you the property at full market value and letting you make payments for a decade, and when the time comes for you to get the title, he simply refuses to sign it over unless he gets some of the appreciation from the house he didn't pay for, didn't maintain, didn't manage, and didn't want for the past decade. With a properly-drafted option agreement and enough time and money spent on attorneys, you could sue him to perform and you'd almost certainly win; however, if the seller's demand for more money comes simultaneously with your own tenant/buyer's exercise of HIS option, you could find yourself at the receiving end of your own litigation unless you bow to the seller's unreasonable demands and let the buyer's closing go forward as planned.

- Or the seller declares bankruptcy and 'surrenders' the property to the secured creditor (the bank), or the bankruptcy court decides that it should be sold to pay off the unsecured creditors.

While it's true that none of these scenarios is legally OK—in every case except the last, you could sue the seller for specific performance, or damages. Whether you'd win, or collect, or spend more money on legal fees than you'd make by winning, is another question altogether.

For all these reasons, control without title strategies are risky, and the way we typically mitigate the risk is by:

1. Not using them on properties that will require a big investment of cash in repairs or down payment. Any cash you put into the property is at risk. No cash, no risk.

2. Disclosing the possibility that we won't get, and therefore may not be able to pass on, clear title to anyone that WE lease/option or land contract the property TO, and creating

'liquidated damages' language with those parties that outlines, up front, exactly what they can get from us should this turn out to be the case.

3. Using these strategies primarily (though not exclusively) for short- and medium-term control, when we have a plan to sell the property or take out the financing with a new loan or partnership agreement within a few years.

4. Recording our interest in the public record.

5. Using additional documents to 'secure' our unsecured interest—an issue we'll deal with later in this section.

Why You Might WANT Control Without Title

There are some cases in which actual ownership of a property is not necessary or desirable, such as when:

- The total profit available in a deal lies in only one of the benefits—for instance, the property has a equity, but won't cash flow based on the underlying financing; or when the property has lots of cash flow but no real equity. In these cases, the benefit you're getting might not outweigh the risks and responsibilities of ownership, and you might choose an acquisition strategy that gets you <u>just</u> the benefit you want, without the risks you don't want.
- The market is in flux, and the value or cash flow of a property could decrease; in this case, you might want the ability to easily "give back" the property, should the market turn against you.
- The seller has some personal, financial, or tax reason that he doesn't want to give up title, but he does want to give up some of the responsibilities of ownership.
- You want to leave some of the benefits—perhaps mortgage pay down, or tax deductions—with the seller to entice him to give you the ones—perhaps appreciation and cash flow—that you want.
- The seller is concerned about your ability/willingness to pay, and needs a period to test your mettle; the agreement could be that the title transfers to you subject to the existing loan after 12 months of on-time payments, for instance.
- YOU have current or pending financial issues—IRS or state tax liens, unpaid child support obligations, judgements, a pending divorce—that mean that when you take title to a property, those issues immediately affect that title. In this case, you might want to take control of properties without immediately getting title to them until you settle with, pay off, or otherwise rid yourself of your problems.

In short, not every deal you run across as a Transactioneer is one that you can, or want to, have title to immediately. There are some that, for one reason or another, require a strategy that gets you enough control to make money, without getting the deed. And the two most common ways to achieve this are Land Contracts and Lease/Options.

A Quick Aside About Regulation

In recent years, both lease/options and land contracts have become targets of over-regulation in many cities and states.

Why? Because, thanks to the actions of a small handful of bad and/or ignorant operators, they're viewed as abusive, one-sided arrangements that take advantage of buyers.

By 'buyers', of course, politicians and regulators mean people who want to own a home, but can't qualify under the government's standards to get a conventional mortgage. The working poor and much of the middle class fall into this category, and the feeling is that lease/options and land contracts exist not as a person-to-person way of giving them a chance at homeownership, but as a way of preying on them[1].

The laws that have come out of this (completely skewed and incorrect) view of these strategies weren't meant for you as a buyer, because you're an evil investor, not a victimized homeowner wannabe who needs to be protected at all costs. Nonetheless, they AFFECT you, in the sense that they may legally limit your SELLERS in what that can do, and require, in these arrangements.

Make sure you're familiar not just with forms and contracts in your state and city, but also with any laws that limit them.

Land Contract/Contract for Deed

A land contract, also called a land installment contract, a contract for deed, or a bond for deed in various parts of the country, is a seller-financing instrument that, when you boil it down to its essence, says "After the buyer makes x payments of $y, the buyer will give the seller the deed to the property. In the meantime, the buyer has all the rights and responsibilities of an owner—just not the actual legal title."

Land contracts are unique among financing strategies in that they convey set of rights known as **"Equitable Title."** And the simplest way to grasp the difference between "Equitable Title" and "Legal Title" is to compare it with the way that cars are purchased and financed.

When you get a loan to buy a car, you do not get the title to the car—the bank keeps it until the loan is paid off.

[1] They've even been labeled "racist" in the Washington Post, New York Times, and other "usual suspect" media. Seriously. Contracts can apparently be racist. Google it.

What you get is a "Memorandum of Title" showing that it's "your" car in the sense that you have the right to drive it, put your "I Buy Houses" sign on it, fill it full of all the miscellaneous tools and papers that are the signs that you're a real real estate investor, and loan it to your kid to take his date to prom. You also have the responsibility to insure it, and not drive it while intoxicated, and keep the brake lights working, and get the new registration sticker every year. But if I were to go to the county registrar and look up actual piece of paper that showed ownership, the legal title would say that it was owned by your lender.

Land contracts work in a very similar way.

The owner (called the **"Vendor"** in a land contract) remains the holder of legal title to the property—that is to say, his name stays on the deed—until you pay it off.

But as the buyer (called the **"Vendee"**) in a land contract, you have the right to live in the property, paint it, sell it (as long as you pay off the balance of your land contract), rent it out, and so on. As the equitable owner under a land contract, you have most of the bundle of rights that any owner has. In fact, the only right you DON'T have is the right to pledge the property as security for a loan or other promise—you can't pledge the title because you don't HAVE the title.

In fact, equitable interest is such a great deal of "control" that selling a house on land contract is a trigger for the due on sale clause in conventional mortgages. Although the deed might still be in the original borrower's name, a lender CAN call the loan due if a land contract is conveyed on a property that is security for that lender's note.

Land contracts documents look a lot like what would happen if a mortgage and a note got married and had a baby. A typical land contract, like a mortgage, contains an address and legal description of the property that is to be conveyed at payoff; contains covenants between the vendor and vendee, and, like a note, also describes the financial arrangements such as the initial balance, interest rate (if any), monthly payment, term, and any balloon date.

The actual form that this document takes is determined, in part, by where you live; different states have different requirements for what a land contract must say in order to be valid. You should have no problem finding the part of your state law that outlines the requirements for wording, inclusions, disclosures, and even how big the margins have to be in order to record them.

One thing they have in common in every state is that they should be recorded; most states REQUIRE recording at the county courthouse within a certain number of days of execution.

And recording is something you definitely want to do.

Having a recorded land contract on a property protects you, the vendee, in the sense that it keeps the seller from selling the property to someone else (unless that person buys it subject to

your land contract, meaning that the buyer of the property still has to sell it to you under exactly the same terms that you agreed to with the vendor).

In practical terms, recording the land contract is likely (but not guaranteed) to keep the vendor from intentionally borrowing additional money against the property—a good thing, since you don't want to get to that last payment, have the seller sign the deed over to you, and then find out that the property you've so diligently paid off now has a $100,000 mortgage on it from a bank that wasn't there when you started down the path of the land contract.

Land Contract Terms

Like seller-held mortgages, land contracts generally contain some combination of down payment (which, as in a seller-held mortgage, can be $0), principal payment, interest rate (which, again, may be 0%), monthly payment, amortization and term.

Also, like seller-held mortgages, all of these terms are completely negotiable between the vendor and vendee, at least within the strictures of any underlying financing.

Your goal, as always, is to negotiate terms that make sense based on the income, expenses, and timeframe of your exit strategy, and that also work for your seller/vendor.

However, they are usually used in situations where the seller already has underlying financing on the property, and where, for one reason or another, buying the property subject to that existing financing is undesirable to either the buyer or the seller.

In these cases, the land contract is used to "wrap" that existing financing, much like the wrap-around mortgage we discussed in the section on mortgages. The terms of the land contract often match the balance, rate and term of the underlying financing, but sometimes at a higher balance, or rate, or longer term.

Let's take an example of a seller who's agreed to sell on a land contract; the maximum you can pay is around $600 a month, because of rents and expenses the property will generate. Assuming that you've agreed to a price of $100,000 on the property, HOW you pay $100,000 at roughly $600 might change based on the seller's underlying financing. Here are 3 scenarios:

	Scenario 1	Scenario 2	Scenario 3
What you're willing to pay	$100,000	$100,000	$100,000
The seller has a remaining loan balance of	$100,000 (seller borrowed $110,00 5 years ago)	$70,000 (seller borrowed $110,000 16 years ago)	$50,000 (seller paid $75,000 18 years ago)

Seller's interest rate	5%	5%	7.5%
Seller's monthly P&I payment	$590.50	$590.50	$524.41
Seller's remaining loan term	300 months	164 months	145 months
Your term	300 months	200 months	360 months
Your interest rate	5.1%	2.04%	6%
Your monthly payment	$590.50	$590.50	$599.55
What the seller "gets"	No additional profit over his payments and term	Nothing for 165 months, then $590/mo. for 36 months	$75.14 for 145 months, then $599.55 for 109 months

In scenario 1, you used a higher interest rate than the seller's to match your payment and term to his; the seller basically "wrapped" his remaining loan with the land contract.

In scenario 2, the seller has a lower loan balance than what you're willing to pay, but his payments are still based on his original $110,000, 5%, 30 year loan, so they're the same as the first seller's. To match his payment, but apply it to a lower loan balance than he initially had and for a shorter period of time than his original loan, your interest rate is spectacularly low. Of course, you could also simply pay $590.50 a month for 169.3 months at no interest, which would mean that the seller made nothing for 165 months and then collected "remainder payments" for only 4.3 months.

Scenario 3 would most likely apply to a tired landlord who wanted cash flow, but didn't want management responsibilities; he'd likely negotiate a market interest rate, which means that to stay under a payment of $600 a month, you have to make those payments for 30 years.

All of the scenarios meet your goal of paying $100,000 at around $600 a month; none of them "match" all of the terms of the seller's underlying financing.

Daddy Knows Best

I love calls with sellers that start out, "Well, I bought this house for my daughter, but she…", because they always end with how the relative has now trashed/abandoned/stopped making payments on the house. That's how we were able to buy this rent-ready $120,000 house for $100,000 on land contract with $1,000 down.

The reason we bought it on land contract, instead of Subject To, was that the seller, despite endless debate, didn't trust me to actually make the payments to his bank. In fact, he insisted that I pay HIM the entire $900/mo. payment, and let HIM pay the $818 that was the bank's part.

Unfortunately, I don't trust people who don't trust people, so every month until the land contract ballooned (yeah I know, I didn't like it either), I put 2 checks in an envelope on the 25th of the month: one to Provident Bank for $818, and one to him for $82. I still own this rental.

When to Use Land Contracts

Any property that has a deed can be purchased using a land contract; in other words, any type of actual real estate (including land, commercial properties, and so on) can be purchased using a land contract.

However, in addition to using them when the seller doesn't want to give up legal title for some reason, your EXIT STRATEGY is important here.

Because you don't, until you pay off the land contract, have a deed to convey, or to use as security, there are some limitations to land contracts that might become important in terms of your options for making money on the deal.

When you buy a property on land contract, you can:

- Rent that property
- "Assign" the land contract (assuming there's no non-assignment clause in the land contract; in fact, you might want to insert a clause that makes it freely assignable, and let the vendor

know that you intend to do exactly that). In this case, you take an upfront assignment fee from a buyer, then step out of the deal and let the new vendee take your place in your original deal. Your seller becomes the vendor to the new vendee, taking on all the responsibility to collect the payments, foreclose out the vendee's interest if necessary, and ultimately deed the property directly to your vendee at final payment.

- Lease/option that property, with full disclosure to the tenant/buyer that YOU conveying clear title to him is dependent upon you GETTING clear title from the vendor. In fact, you should build a liquidated damages clause into your lease/option with your tenant buyer that defines exactly what you'll do for the tenant/buyer should he try to exercise his option, and be unable to because the vendor has, in some way, clouded it. You might offer to return the option fee and the prior 6 months' rent, for example
- Sandwich the land contract, meaning that you offer the buyer another land contract at a higher price, payment, and so on, but with the same disclosures about getting clear title.

This last 2 strategies come with another set of potential pitfalls should your 'buyer' default, and that's the problem of trying to evict, or foreclose on, a tenant/buyer or vendee when you're not the title holder of the property.

Some courts are fairly forgiving on this issue, and others require the owner of record to file and appear in all such matters.

Check with a local eviction expert on how your particular housing courts are likely to treat this; one solution is to have the seller transfer the property to a land trust, and have the trustee—possibly you—be the vendor in the land contract to your Buyer, while the vendor in your original land contract remains the beneficiary until the final land contract payment is made. Another is to simply have the vendor/title holder file and see through any legal processes needed.

How A Land Contract Deal "Works"

Other than the final step—executing and recording the land contract itself—land contract deals proceed in much the same way as seller-held mortgage deal:

1. You locate and negotiate a deal on a property that will work for you under the terms of the seller's existing loan and that will work for the seller in terms of his future plans.

2. You write an offer on the property that documents the deal you've agreed to with the seller

3. You complete your usual due-diligence (inspections, title search, etc.) and prepare (or have prepared) the land contract for the seller's review

4. At the closing, WHICH SHOULD STILL BE HELD AT AN ATTORNEY OR TITLE COMPANY OFFICE,
   a. You pay any down payment that has been agreed to
   b. The seller pays any back taxes and the prorated taxes to the day of closing (assuming that you haven't agreed to take responsibility for those taxes)

c. You and the seller/vendor execute the land contract
d. The title company or attorney records it

Structuring Land Contracts

Like seller-held mortgages, the terms of land contracts are flexible as to interest rate, payment dates, delayed first payments, and so on—unless there's an underlying mortgage that has to be serviced, in which case your payment will generally have to be enough to cover the payments on that debt.

But as you're thinking about the deal structure, an important fact to remember is that having a land contract—even a recorded one—does NOT do is give you a "lienholder's position" in the property.

In other words, if vendor does any of those things we talked about at the beginning of this section-- stops making payments on an underlying loan, or stops paying the real estate taxes, or gets a judgment against him that attaches to the property—your land contract interest can be foreclosed out by a secured lienholder, without any payment to you whatsoever. Oh, and because your land contract isn't considered a secured interest, it can be also be voided by a bankruptcy court, should the vendor declare bankruptcy and surrender the property to the lender.

So when you buy a property on land contract, you probably want to put some additional protections in place in the initial negotiation, including:

- Directly paying the taxes and insurance, rather than paying them to the seller and trusting him to pay the bills when the time comes
- Directly paying the payment on any underlying loan—even if that's by sending a check made out to the bank to the seller each month—to assure that they're being paid
- Alternatively, setting up the land contract payments through a "servicer"—a company that's licensed to collect payments from you; hold tax and insurance portions in escrow and pay them when they come due; making any payments to underlying lenders; and sending any excess payment to the vendor. Servicers cost money—generally in the range of $20-$30 a month—and that's likely to have to come from you.
- In most states, the state law says that vendees in land contracts have the right to directly pay past due mortgage payments, tax bills, and insurance bills to protect their interest in the property, and to be credited with these payments as if they'd been made directly to the vendor. In other words, if a vendor gets $6,000 behind in property taxes, you can pay that bill to the county, and then skip the next $6,000 in payments to the vendor. Whether your state law says this or not, it's good language to have in your land contract.
- Getting a "Mortgage to Secure Land Contract," similar to the "Mortgage to secure option" discussed in the intro to mortgages chapter, so that you can have an ACTUAL lien against the title that takes its place before any new liens that might come later

There are some other eventualities to consider, as well;

- As is the case with seller-held mortgages, vendors often get offers to "buy the land contract" from 3rd parties. And, as is the case with note buyers, land contract buyers (who actually buy THE PROPERTY, subject to the land contract, rather than the land contract itself) usually make cash offers that are significantly lower than the balance you owe. A first right of refusal clause embedded into your land contract might give you the option to pay off your own land contract at a deep discount
- Always look at the complete amortization table for your land contract and any underlying financing; do NOT 'get ahead' of the vendor in terms of what you owe vs. what he owes.

This last admonition requires a little more explanation.

If you buy a property on land contract that is already subject to a mortgage and note, it might be tempting to set up payments that are higher than the payments that the seller owes the bank, both to entice the seller to do the deal and to pay it off faster.

However, this can become a real problem down the road—as in this example:

	Seller's position	Your position
Balance owed day 1	$90,000	$120,000
Payments due from	$590.50	$900
Interest rate	5%	0%
Balance owed year 10	$56,536	$42,000

See what happened there?

Your larger payments at a lower rate left the seller in the position, in year 10, of owing the bank $14,500 MORE than what you owe the seller…and that situation gets worse and worse in the following years. If you were to attempt to pay off the balance of the land contract at year 10, your seller would have to find $14,500 to bring to closing to pay off his lender and give you clear title.

In fact, at year 14, your "loan" is completely paid off, and the seller has another 6+ years of payments due to the bank.

The ONLY way to make this scenario work is for you to pay the $900 directly to the lender, giving the seller no 'profit', but paying off the underlying loan in just shy of 11 years. The last 3+ years of $900/mo. payments due from you will be paid directly to the seller.

Seller Objections

Many times, we negotiate land contracts in place of Subject to or seller-held mortgage deals for the simple reason that the seller WILL NOT give up title to the property.

The objections you'll hear and the way you'll answer them are more or less identical to those you'll hear when negotiating a seller-held mortgage ("How do I know you'll make the payment"), and to Subject to deals ("But I don't WANT to continue to own it!"). If you've mastered the answers to these objections, they'll work just fine in a land contract scenario.

By the way, in some parts of the country—particularly the Midwest and South, and especially in rural areas—land contracts are much better known, and more often used, than any other form of seller financing. It's common, in fact, to sell properties advertised for sale "on contract," meaning land contract.

In any negotiation around a land contract, but especially in these areas where they're common, the topic of a balloon payment is likely to come up during the process. We've already talked about the danger of a balloon payment; you can make your decision about whether to subject yourself to one on a case-by-case basis.

Purchase Contract Language

"$[Purchase Price] payable as follows: Buyer shall pay $[down payment, if there is one] at closing; balance shall carried via a land installment contract with the following terms: $[initial balance at _[interest rate]__% annual interest, compounded monthly, in monthly installments of $_[payment]_____ on the _[day payment is due]___ day of each month beginning __[month and year payments will begin]__, with the last installment being fully due and payable on __[date and year of last payment or balloon payment]. Land contract will be provided to buyer at least 72 hours prior to closing"

Caveats About Using Land Contracts to Control Properties

- **Watch out for sellers in financial trouble.** I think we've beaten the "why" for this to death.
- **Do your research and documentation**. Get a title search. Make certain the seller owns the property and can afford to sell it to you. Beware properties with HELOCs or other open-ended lines of credit. Get the land contract in writing, and record it.
- **Know the tax consequences.** When you are the buyer in a land contract, you have the right to deduct interest payments and taxes from your income. When the property is an income property, you also have the right to depreciate it and write off insurance and other expenses. But–and this is key–the seller gives up these rights. If your seller is tax-sensitive–i.e., wants depreciation and deductions–a lease/option may be the better solution for him. If he wants to do a 1031 exchange when you pay him off, a land contract is not a viable option.
- **Don't think that because you don't have title, a land contract is easy to 'abandon'**. I once had an investor tell me that the reason she liked buying properties on land contract was that if she decided she didn't want the property after all, or if one of her tenants beat up the property and she didn't feel like rehabbing, or the market value of the property

dropped, she could just "give it back" without any consequences. While that's true *if the vendor agrees to it*, it is NOT the case that you can do it unilaterally. If you try, depending on the state you live in, the vendor might be able to sue you for damages, or might be able to retroactively collect the difference between your monthly payment and what the market rent on the property should have been.

- **Most land contracts are done on properties with underlying loans, so know what the terms of that financing are, and be careful about putting the seller in a position where he's unlikely to be able to pay that loan**. Don't set your payments to the seller to be less than his to the bank, because you just know what's going to happen if you do. Also, even if your initial land contract balance is HIGHER than the loan the seller owes on the property, it could, if it's a zero interest loan, at some point become LOWER. Don't let this happen, because if the seller still owes money when you've paid off your land contract, you may have a hard time getting clear title. In fact, in many states, it's illegal for the seller to owe his bank less than you owe him, so look at the entire amortization, not just what the deal looks like on day 1

- **If the payment on the seller's underlying loan includes taxes and insurance,** it's OK to include those in your payment, since you'll probably make it directly to the bank anyway. If not, pay them yourself, not via the seller.

- Also, remember that if you buy on land contract, **you won't be able to borrow additional money secured by the property if you need it for renovation**—so don't go into a land contract deal that needs significant rehab unless you can pay for it out of pocket.

- **Be aware that the seller's legal rights in default depend on the state that the property is in**. In some states, the only thing he can do is foreclose, which is expensive and unpleasant; in these states, the default protection is for you to sign a "release of land contract" that's held in escrow. You can't use the land trust with default provisions, because you can't be the beneficiary of a trust that owns the property and also the vendee in the land contract. In other states, there's a shorter forfeiture process that's cheaper for the seller, or a shorter process for the 1st 5 years and a foreclosure afterward.

Note: this is an OHIO land contract, with legal language and disclosures required IN OHIO. If you're using a land contract in another state, have a qualified legal specialist review and insert and language required there. I'm not kidding. Also, this is a land contract for BUYING a property, not selling it; there are certain clauses you'd want to add, or delete, if selling a property on land contract.

Land Contract

THIS AGREEMENT entered into the ___ day of _____, 20_____by and between,
, an unmarried woman, hereinafter referred to as "Seller", whose address is
, and _____, hereinafter referred to as "Buyer", whose address is _P.O. Box 58279, Cincinnati, Ohio 45258

WITNESSETH:

1) In consideration of the mutual promises herein contained, the Seller agrees to sell, and the Buyer agrees to buy, in accordance with the terms and conditions of this Agreement, the following described real property known as

SEE ATTACHED LEGAL DESCRIPTION***

Together with all the improvements thereon, all privileges, appurtenances, easements, and all fixtures presently situated in said building, including, but not by way of limitation: all heating and air conditioning equipment including window units; all electrical, plumbing and bathroom fixtures; shades; venetian blinds; awnings; curtain-drapery-traverse rods; storm windows & doors; window & door screens; affixed mirrors; wall to wall, stair, and similar attached floor covering and carpets; television aerials, and rotor operating boxes; water softeners; garage door openers and similar operating devices; built-in ranges, ovens, refrigerators, dishwashers, garbage disposers, trash compactors, humidifiers; all affixed or built-in furniture and fixtures and all utility/storage buildings or sheds.

2)Buyer hereby agrees to pay for said property the sum of
dollars ($_____), payable as follows:

A. The sum of_____ Dollars ($_____) shall be paid upon execution of this Contract, the receipt of which is hereby acknowledged by Seller.

B. The Buyer shall pay the balance of purchase price as calculated above, which equals Dollars ($_____), with interest from date at the rate of _____ per cent (%) per year on the unpaid balance until paid. The said principal and interest shall be payable at

[address of bank}_____, in monthly installments of _____ ($). Monthly payments to commence on the _____ day of _____ 20__, and to be paid on the first day of each month thereafter until the principal and interest are fully paid, except that the final payment of principal and interest, if not sooner paid, shall be due and payable on the first day of _____, 20 _____.

In addition to payments of principal and interest hereunder, Buyer shall pay Lender, monthly, amounts sufficient to fund an escrow account for taxes and insurance which presently equal dollars ($_____) per month. The total monthly payment required as of the closing date therefore is _____ ($_____). At such time as the escrow payments must be increased or decreased to cover taxes and insurance, Seller shall notify Buyer and Buyer's monthly installments shall be adjusted accordingly. Payments made by Buyer shall be applied first to escrow, second to interest and the balance to principal. Principal may be prepaid at any time, without charge or penalty.

Buyer shall pay to the Seller a late charge of Ten percent (10%) of any monthly installment not received by the Seller within four days after the installment is due.

3)When the Buyer has paid the full purchase price as set forth above in the manner and at the time as required of the Buyer by the terms and conditions of this Contract, Seller agrees to convey the above described property to the Buyer by Deed of General Warranty, with release of dower, if any.

Such Deed shall be sufficient to convey title to Buyer free from encumbrances except those set forth in this Agreement or arising through any acts of the Buyer, and except restrictions imposed by zoning ordinances, or restrictions, reservations, and easements of record, if any.

4)The premises are subject to the following mortgages and liens:

HOLDER OF MORTGAGE OR LIEN FACE AMOUNT WHERE RECORDED

NONE

AT NO TIME SHALL THE PRINCIPAL DUE ON THESE NOTES BE GREATER THAN THE AMOUNT DUE FROM THE BUYER TO THE SELLER.

The premises are subject to no other liens or encumbrances, excepting, however, all zoning ordinances, restrictions, conditions, and easements of record.

5) If the Seller defaults on the existing mortgage on the property, Seller agrees that the Buyer may pay on such mortgage and receive credit toward payment due under the terms of this Agreement. Seller shall verify to Buyer, every three months that the existing mortgage payments have been made as required.

6) If Buyer wishes to sell the property during the term of this Agreement, he shall be able to do so and upon payment to Seller of the full amount then due and owing hereunder, Seller shall sell and convey the premises either to the Buyer or Buyer's purchaser, as directed by Buyer.

7) Seller agrees to deliver possession of the premises to Buyer at once, subject to tenant's rights.

8)Within twenty (20) days after this Agreement has been signed by both the Seller and the Buyer, the Seller will cause a copy of the Agreement to be recorded in the office of the County Recorder in the County where the property is situated.

9) Buyer shall pay the cost of all utilities in connection with the property that may become due or payable on or after this date.

10) If the Buyer fails to perform any of the covenants and agreements of this Agreement as stipulated, or within thirty (30) days after receiving written notice of default thereof the Buyer has not corrected such default, the unpaid balance shall become due at the option of the Seller, or the Seller may initiate forfeiture of the Buyer's interest and retain all installment payments and liquidated damages for the Buyer's nonperformance and may retake possession of the property, all as provided by law.

11) Destruction of or damage to any building or other improvements now or hereafter placed on said property, or of any personal property, if any, described in this Agreement, whether from fire or any other cause, shall not release Buyer from any of his obligations under this Contract; it being expressly understood that Buyer bears all risk of loss to, or damage of, said property.

12) The Buyer agrees that said property and the buildings and improvements thereon are, at the date of this Agreement, in good condition, order and repair and that he shall, at his own cost and expense, maintain said property and the buildings and improvements thereon in as good order and repair as they are in on the date of this Agreement, reasonable wear and tear expected.

13) Should Seller choose to sell the Property which is the subject of this Land Installment Contract, Buyer shall have the exclusive and irrevocable right to purchase it at the same price offered by any buyer. Seller is obligated to notify Buyer immediately of any bona fide offer to purchase the Property and Borrower shall have ten (10) calendar days from notification to decide to purchase the Property at the same offered price or waive this right of first refusal.

14) Buyer shall indemnify and hold Seller and the property of the Seller, including Seller's interest in said property, free and clear from liability for any and all mechanic's liens or other expenses or damages resulting from any renovations, alterations, buildings, repairs or other work placed on said property by Buyer.

15) The Buyer will observe and obey all Federal, State, and Local statutes and laws including all rules or orders of any official commission or board of the United States, or the State, County, or City in which the property is located. The Buyer will obey all ordinances of such city in respect to the use and occupation of the property, and will not do or suffer to be done anything that may constitute a nuisance.

16) This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

17) Time is expressly declared to be of the essence of this Agreement.

18) The waiver of any breach of this Agreement by either party shall not constitute a continuing waiver of any subsequent breach, either of the same or of another provision of this Agreement. The delay or omission by the Seller to exercise any right or power provided by this Agreement shall not constitute a waiver of such right or power, or acquiescence in any default on the part of the Buyer. The acceptance of payments made by the Buyer in a manner or at a time other than as required by the terms and conditions of this Agreement shall not be construed as a waiver or variation of such terms and conditions. Any default on the part of the Buyer shall be construed as continuous and the Seller may exercise every right and power under the Agreement at any time during the continuance of such default, or upon the occurrence of any subsequent default.

IN WITNESS WHEREOF, the Seller and the Buyer have signed this Agreement in counterparts on the day and year first above written.

Witness Seller(s)

Witness Buyer

STATE OF Ohio, COUNTY OF Hamilton, SS:

BE IT REMEMBERED, that on the _____ day of _____, 20___, before me, a Notary Public in and for the said state, personally came _____the Seller in the foregoing Agreement, and acknowledged the signing thereof.

IN TESTIMONY WHEREOF, I hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Notary Public

STATE OF OHIO, COUNTY OF HAMILTON, SS:

BE IT REMEMBERED, that on the ___ day of _____, 20___, before me, a Notary Public in and for the said state, personally came _____, the Buyer in the foregoing Agreement, and acknowledged the signing thereof to be a voluntary act and deed.

IN TESTIMONY WHEREOF, I hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Notary Public

Leases with Option to Buy

Real estate folk often say "I bought that property on a lease/option"—a completely inaccurate statement. When you get a lease/option on the property, you're renting it, with a right to buy it at some point in the future.

When a seller "sells" you a house on a lease with option to buy, what he's doing, legally, is creating a landlord/tenant relationship with you and giving you a right to buy his house at later time.

The play, of course, is in the 'spreads'.

If you can negotiate a lease/option with a $0 option fee, $1,000/mo. rent and a $150,000 option price, then find someone who wants to live in that house at the market rent of $1,750, ultimately buy it at the market price of $190,000, and will pay a $7,000 option fee to get that right, you can make money even though you the only thing you control is the occupancy (through the lease) and the equity and appreciation (through the option).

Lease/options are the ultimate in low-commitment control; they're ideal for properties and markets that you're concerned may decrease in value, deals where the profit is small enough that the risks and responsibilities of full ownership are not worth taking on, and deals you just need to "test drive" to see if you really want them.

Lease/options are the one and only creative buying strategy wherein you can simply walk away from your rights and obligations to the property without any repercussions[2]. In fact, the 'graceful exit' is built right into the two contracts, in the form of an expiration date for the lease and option.

On the other hand, as Spiderman's Uncle Ben said exactly the opposite of, with little responsibility comes little power.

Lease/options are the strategy that are most subject to disruption by the acts of the seller. Because literally no title, or even equitable title is conferred on the tenant/buyer, the seller can intentionally or unintentionally do all manner of things that make it difficult for you to exercise your option and complete the deal—and, despite the existence of a legally binding contract that says otherwise, it can be practically difficult for you to force him to do what he said he'd do.

It's for these reasons that if you really care about making sure that the seller can and will sell when the time comes (and there may be some times when you don't), you'll:

[2] This is, of course, assuming that you fulfilled the few obligations you did have in regards to the property—like to leave it in the same condition in which you received it, and pay the rent through the lease term. Like any landlord, your "seller" has the right to sue you for damages and lost rents if you don't.

1. Record your option and

2. Use a "Mortgage to secure option" so that you can force the sale of the property via a foreclosure if the seller won't or can't perform.

When Lease/Options are Used

Lease/options are used primarily in 3 ways by Transactioneers:

1. **As the filling in a "Sandwich Lease/Option" on pretty houses that have <u>some</u> equity and <u>some</u> cash flow based on the terms of the underlying loan**. These properties—in homeowner-type neighborhoods and move-in condition—lend themselves well to the exit strategy of finding a wannabe homebuyer who will pay a reasonable option fee to move into them, pay rent for a while, and ultimately, one hopes, buy the property by qualifying for a new loan.

When there's a spread between what you've committed to pay the seller and what you can get from a buyer <u>on all three of these payments</u>—the up front, the monthly, and the "back end" sale price—a sandwich lease/option keeps you involved in the deal so that you can, if all goes well, benefit from all three.

It's important to note that there are 2 separate lease and option agreements in a sandwich lease/option deal, and that the one you use to control the property will look very different than the one you use to give use to your tenant/buyer. And not just in that the option fee, rent, and price are different: yours will specifically state that you have the right to sublease and assign your option; your tenant/buyer's will specifically say that he does not.

2. **As a tool in a "lease/option assignment."** Lease/option assignments are a popular, though controversial[3], strategy for making money on deals where the seller is both close to being over financed AND has a payment on his underlying loan that is close to what the property will rent for.

Because there's no cash flow and no real equity in these deals, the ONLY profit in them is in the up-front option fee paid by the end tenant/buyer. There's no financial reason for you to "stay involved" in the deal once that money is paid, and so instead of having the end tenant-buyer pay you each month, and you pay the seller, you simply assign your lease/option with the seller directly to the tenant/buyer and "step out" of the deal.

The potential practical and ethical issues involved in leaving a civilian seller, who has little say in your screening process, and no idea how to proceed with an eviction if your tenant/buyer

[3] Most of this "controversy" is in the form of arguments by state real estate licensing regulators that, by the nature of these deals (no money down, no continuing obligation to make monthly payments) and the forms that most of the contracts take (most say that you have no intention of paying even 1 months' rent unless you locate a tenant/buyer), lease/option assignments are equivalent to collecting a fee for renting someone else's property, and thus require a real estate license.

doesn't pay, in a deal with a civilian tenant/buyer, who (even if you disclose such) probably doesn't fully realize that his possibly-sizeable option fee is at risk if the seller can't or won't actually sell the property, are huge. It's my opinion that this strategy deserves a lot more thought and better paperwork than most of the practitioners of it have bothered to generate, and that it is, perhaps, a strategy best left to real estate licensees who can legally be paid to manage the rental going forward from the signing of the lease.

3. **As a tool to control apartments and commercial properties during a repositioning, or in a circumstance where the seller wants to give up management responsibilities, but is not yet ready to "sell"**. In what's often called a "Master lease/option," commercial and apartment buyers sometimes get a lease on an entire property with the right to sublease the individual units or spaces, and an option to buy the property at a later—sometimes much later—date.

This can allow the buyer to do needed "repositioning"—in other words, upgrade the building, get rid of non-payers in favor of good tenants, and so on—thus raising the income on which the value of the property is based before applying for financing from an institutional lender.

It can also let an older seller who doesn't really care to manage the property any more transfer that responsibility to an optionee who does, while retaining the sometimes-sizable tax benefits of ownership for himself. More importantly, it can allow such a seller to avoid paying huge capital gains taxes on high-priced, fully depreciated properties by putting off the actual sale of the property until after their death.

My Biggest Lease/Option Disappointment

Sometimes sellers make absolutely the wrong decision. You can see that they're making the wrong decision; you can show them in detail why it's the wrong decision; and they do it anyway.

This seller was in her 70s when she realized that she was in trouble with this 40-unit apartment building. Although it's in a high-demand, highly-trafficked area, it had 6 long-term vacancies and a poor 5-year rent history. 3 of the units were unrentable because of a roof leak; the largest unit (a $1,200/mo. 3 bedroom) was occupied at no cost by a relative, who also served as a handyman for the building; one unit was used as storage, because the basement was full of 40 years' worth of miscellaneous building materials, tools, and long-discarded tenant possessions; tenants who moved in never stayed beyond their lease term because of the condition of the building and the lack of management.

Because she'd owned the property for more than 40 years, the building was long-since fully depreciated, and had only a small mortgage from a refinance 10 years earlier.

She got a cash offer on the building for $900,000—a fair offer given the recent income and expense statements and the condition.

When I heard this, I explained to her that after she recaptured the depreciation and paid the capital gains taxes, and paid off the mortgage, paid for the transfer taxes, and transferred the security deposits to the buyer (which she'd spent, of course), she'd only net around $500,000 Then I made another offer: $1.1 million, with $30,000 down (to pay off the back taxes and 'transfer' the security deposits, on a 20 year lease with option to buy, with monthly payments of $6,000 a month and "triple net" terms (I'd pay the taxes, insurance, and maintenance costs). Even after making the payment on the mortgage (which had only about 7 years left to run), this represented an income of more than she was netting from the building at the time.

I also promised not to exercise the option until both she and her husband died. This way, she'd just pay taxes on the monthly rent payment, netting around $57,000 a year in income with no expenditures, and leave her heirs $1.1 million almost tax-free with the stepped-up basis.

She initially agreed to this offer, and my plan was to use partner money to renovate the building, fill the vacancies, increase the rents to market price, collect income until she passed away, then refinance or sell the property at the pro-forma value of around $2 million.

I drafted the documents, sent them to her for review…and then heard after 2 weeks that the cash buyer had raised his offer to $1.2 million, and she'd accepted it. She paid over a quarter of a million dollars in taxes on that sale, and after the other expenses—mortgage and tax payoff, transfer taxes, rent prorations, and so on—netted a little over $600,000.

This seller is still alive and kicking, and now living on social security payments of around $2,500 a month, because all that cash went away over the course of a decade. $57,000 a year would have been a life-changing supplement to that income, and a million-dollar inheritance would have been a nice gift to her kids. Ah, well—as Pete Fortunato is fond of saying, "There are no impossible deals, but there are impossible people."

Lease/Option Vocabulary

While lease/options have the same basic set of things you can negotiate—the upfront payment, monthly payment, total price, and even, under some circumstances, amortization—as other forms of seller financing, they're called different things because lease/options really aren't financing instruments, the way notes and mortgages, and even land contracts are.

Lease/options are memorialized by two documents: the **lease**, which outlines the terms of payment and occupancy, and the **option to buy**, which summarizes the terms of the sale, including the price, date, and who pays for which expenses at the closing.

When you're BUYING on lease/option, the lease is more properly called a **master lease**, and should contain specific language that allows you to assign the rights in the lease, and to 'sublease' the property to an occupant. A master lease gives you the right to control and occupy the entire property, even if it's a multi-unit building.

The option should also allow assignability, as well as have a right to market the property for sale, lease/option, or rent embedded in it. And it must be in a recordable format, with notarized signatures, so that you can record it at your county courthouse.

In a lease/option, any upfront payment you might make is called an "**option fee**" rather than a down payment. It is, nominally, the fee one pays to "buy" the option to buy, but, like a down payment, it's both non-refundable and deducted from the overall price should the tenant/buyer buy the property.

The monthly payment is, of course, **rent**, and does not amortize the balance of the option price unless the agreement is set up so that it does. A common way to effectively 'amortize' the purchase price is through the use of **rent credits**, meaning that a fixed portion of each payment is credited toward the purchase price. That 'fixed portion' can be up to 100% of the monthly rent, if there's no underlying loan in the way; a lease/option with a 100% rent credit is functions in much the same way as a 0% interest seller-held mortgage, in that all of the payments go toward 'paying down' the balance owed.

Lease/options have an **option period**, which is the term during which the option can be "**exercised**"—in other words, during which you can buy the property at the agreed-upon price.

In most cases, the option period is a period beginning on the day of the signing of the option and ending some number of years later. It's also possible to have an option period that OPENS at some point in the future; in other words, you start leasing today, but have the right to buy the property starting 2 years from now and ending 10 years from now. These are useful in situation where for tax or other reasons, the seller doesn't want the option exercised for some period of time.

The option period functions much like a balloon in a land contract or mortgage; it represents a date on which you must pay off the balance due, or surrender the property back to the owner. However, automatic extensions to the option period, at the request of the tenant/buyer or by mutual agreement between the parties, are common in lease/options. These are sometimes, but not always, accompanied by payments of additional option fees.

The agreed-upon price in the option agreement is called the **option price** or **strike price**. In most lease/options, it's simply set in stone; you agree to pay $xxx,xxx whenever you decide to do that.

However, the option price can be a floating price; for instance, it can be set at the balance on the seller's underlying loan at the time at which the option is exercised, giving you control over mortgage paydown as well as appreciation.

Purchase Contract Language

Unlike other acquisition strategies we've discussed, this one isn't a purchase and thus doesn't, strictly speaking, call for a purchase contract before the contract documents are signed.

The "Purchase agreement" is really represented by the option itself, which outlines the price, date, and terms of the ultimate sale.

However, it's still important to get a title search on the property as part of your due diligence, so that you can assure yourself that (other than the mortgage that the seller almost definitely has), there are no current issues with the title that would cause you to be concerned that the seller couldn't transfer it should you exercise your option.

Structuring Lease/Options

Unlike other seller-finance techniques we've discussed, lease/options have just 4 basic financial terms:

- The option fee, which should be as low as possible
- The rent, which can include a rent credit, but should be as low as possible and DEFINITELY low enough to create cash flow
- The option price, which can be set or floating, and should be as low as possible
- The option period, which you generally want to be as long as possible

But there's an additional set of terms to think about when structuring the deal and creating the documents, such as:

- **Lease/options don't have to be options to buy for CASH.** While most lease/options state that the eventual purchase will be a cash purchase (which is to say that the buyer will pay the option price either by financing the property with a lender, or by selling the property and paying off the seller from the proceeds of the sale), there's nothing to say that the option can't be to buy Subject to the existing loan, or on land contract, or owner financing. This can be a good way to ease a seller into the idea that you WILL, in fact, make payments—agree that you'll lease from him for 2 years, and if you keep the property maintained, and make all the payments, he'll let you take over his mortgage, for example.

- **Who pays for capital improvements**? You'll probably agree to do general repairs, maintenance, and turnovers as part of your option agreement, as a way of enticing the seller to do the deal. But should you put a roof on a house that isn't, and may never be, yours? What about replacing the heating and cooling? Remember, lease/options are governed by landlord/tenant law, and these laws all state that the OWNER is legally responsible for maintaining the property in a safe and habitable condition.

  The problem, of course, with making an agreement with the owner that he'll do these things is the possibility that he won't, or that he won't be able to afford to. This can be handled by specifying that you'll contract for and oversee this work, but that any cost will be deducted from your rent, or from the option price of the property.

- **If there's an underlying mortgage, how will the payments be handled?** Again, to assure that they're being made, it's a good idea for YOU to pay them directly.

- **If the taxes aren't paid, or the insurance lapses, how will you fix that**? Perhaps you can make the payment directly, and deduct the cost from your rent or your option price. Or, you can hire a servicer to collect your rent, make the appropriate payments, and send any balance to the owner.

- **What if the eventual lender won't accept the option agreement as a "purchase contract?"** Sometimes, the hardest part of exercising an option—especially when you're the filling in a sandwich lease, but even when you're buying the property directly from the seller—is making the lender who's providing the end financing understand that the option agreement IS a purchase agreement. The mortgage officer often requests/demands that a new purchase agreement (often on the "board form") be filled out and signed between the owner and the end buyer before the loan can close.

  For this reason, you'll want wording in your option agreement that the seller will cooperate in this process, if necessary, and this is another GREAT reason to have your option recorded—so that if your seller and your lease/option buyer, in a sandwich lease situation, can't decide to "cut you out" of the deal once they're directly in contract with one another.

- And the BIG "what if"—what if the seller can't, or won't, sell to you when you exercise your option to buy?

The answer is the "Mortgage to Secure Promise" that we've talked about in general terms in previous sections.

Leases without Options and Options without Leases

While these are not strategies that I've personally used, and therefore not strategies that I teach extensively, no "control without title" discussion would be complete without mentioning the fact that leases and options can be used ALONE in certain situations to produce control of properties.

Master leases, when used alone, can produce cash flow through the spread between your negotiated rent and the rent you collect.

In master leases, the owner is ALWAYS responsible for all repairs and maintenance to the property, as well as taxes and insurance; you're responsible for paying rent and ordinary wear and tear, just like any tenant.

While there's no agreement with the owner (not "the seller", in this case) that you'll ever purchase the property, a successful master lease is obviously a potential setup for a future

creative purchase; the relationship you build with the owner over the course of years should convince him that you're good for the monthly payments, at such time as he decides that he's tired of paying the expenses for the property.

Options are the opposite; you have the right to buy the property, but no right to possession or occupancy, and no responsibility for maintenance or repairs.

Options are best used for short term control (such as when you need to do extensive due diligence on a property to find out whether you can build on it, or get it rezoned, or whatever, or when you need to make sure you have a buyer for it), and—get this—when your seller doesn't actually want to sell at all.

You'll run across these situations from time to time; sellers sometimes sell not because they want to, but because they feel like they have to, in order to solve what's really a short-term financial situation. Examples I've run across include a single mom who "had to" sell a house she loved, and that was in her perfect school system, because her divorce decree said that her husband had to be paid $10,000 for his equity in the house, and she didn't have it and couldn't borrow it. Giving her a $10,000 option fee to buy the property at today's price, but in 15 years when her last kid graduated from high school, might have been a good deal for both of us, had I known about them at the time.

Rather than just leave this discussion here, I'll give you my best recommendation for where to learn about these strategies if you're interested in exploring them in depth:

Options

- Jack Miller. Jack isn't with us anymore, but a lot of his education still is, at www.CashFlowDepot.com
- Pete Fortunato. Pete doesn't have a course JUST on this topic, but talks about them extensively in several of his workshops. Hopefully, you'll be able to find one at www.PeterFortunato.com, which he does update from time to time.
- Bill Cook. Again, no specific course on the topic, but uses and covers them extensively and creatively in his various live workshops. www.CashflowREI.com

Master leases

- Dave Tilney. The master of master leases; unfortunately, he only does live events, and only yearly or semi-annually. www.DaveTilney.com

MASTER AGREEMENT OF LEASE

This Agreement is made by _____ ("Owner") and _____ ("Investor"), on _____. Owner hereby leases the Property located at _____ to Investor on the following terms and conditions:

1. **TERM & OCCUPANCY.** The initial term of this Lease shall be for _____ months beginning on _____ and ending on _____. This Lease is entered in the anticipation that Investor will sub-let the premises. The Lease shall renew for __ year periods commencing _____ unless Investor shall notify Owner of their intent to allow the lease and Option to expire. In the event that Investor shall allow the lease to expire Investor shall execute such releases as shall be necessary to extinguish the Option.

2. **PAYMENTS.** The Lease fee during the initial period of this lease shall be ____ per month, payable without demand on the ____ day of each month. All Lease payments will be made at _____ or such other address as Owner shall designate. If a payment is not received by Owner at that address before ____ local time on the ____ day following the due date it will be considered late and a late fee of ____ of the unpaid amount will be assessed.

It is intended that Owner will use the Lease payment to pay the existing loan secured by a mortgage against the premises. Should Owner fail to do so, Investor shall have the right to make payment directly to the holder of said mortgage and all amounts so paid will be credited toward the payments due under this Lease.

3. **APPLICATION OF PAYMENTS.** There may, from time to time, be amounts owed by Investor in addition to the monthly lease fee.

All payments received by Owner will be applied as follows: First to any late fees owed, then to any other amounts owed, then to any past due Lease fee, and finally to the current Lease fee due. Partial payments will incur a late fee of ____ of the amount that the payment is short of the amount due.

4. **UTILITIES, TAXES AND INSURANCE.** Investor shall pay for all water, waste removal, sewerage, gas and electric current which may be assessed or charged against said premises.

Taxes and Insurance are being paid as part of the monthly lease fee. In the event of any Insurance claim for damage to the real estate Owner agrees to assign the proceeds to Investor for use in restoring the premises. In the event that the amount of such a claim shall exceed the Option Price Investor shall have the right to either allow Owner to retain funds sufficient to exercise the Option to Purchase ($_____) and receive the amount in excess of the Option Price and title to the real estate by a deed of general warranty, or to have the entire claim amount assigned to Investor and continue this Lease and associated Option to Purchase.

5. **APPLIANCES**. Owner will leave such appliances as are presently on the premises; however, Owner has no obligation to replace or repair such appliances, nor shall Owner have any claim to appliances hereafter installed on the premises by Investor or any sub-lessee.

6. **REPAIRS & MAINTENANCE.** During the term of this lease, Investor agrees to maintain the premises in the same or better condition as it is currently

7. **RENEWAL.** This Lease is associated with an Option to Purchase and shall renew along with said Option at Investor's sole discretion, as set out above. In the event of renewal the lease fee shall change to be equal to the then current PITI payment on Owner's existing Mortgage Loan. The Option price shall remain $_____.

8. **PHONE.** Investor agrees notify Owner, and Owner agrees to notify Investor, of any changes to the contact phone numbers.

9. **ASSIGNMENT AGREEMENT.** This Agreement and the associated Option to Purchase shall be freely assignable.

10. **QUIET ENJOYMENT**. Owner agrees that if Investor pays the rents and keeps and performs the covenants of this lease on the part of Investor to be kept and performed, Investor will peaceably and quietly hold the premises during the term hereof without any hindrance, ejection or molestation by Owner or any person lawfully claiming under Owner.

11. **BINDING EFFECT**. This lease and the agreements of Owner and Investor contained herein shall be binding upon and inure to the benefit of heirs, executors, administrators, successors and assigns of the respective parties.

12. **SEVERABILITY OF PROVISIONS**. Investor agrees that each provision of this Agreement shall be deemed severable and if for any reason any provision or provisions hereof are found to be invalid, unenforceable, or contrary to any existing or future law, such invalidity shall not affect the applicability or validity of any other provision of this Agreement.

IN WITNESS WHEREOF, Owner and Investor have executed this agreement on the day of , ____.

Signed and acknowledged in the presence of:

For the Owner _____

Investor _____

OPTION TO PURCHASE

_____, an [unmarried man etc.], ("Seller") and _____, an [Ohio Limited Liability Company etc.] ("Buyer") having executed a lease dated _____ for the ("Property") located at _____ and more particularly described as:

LEGAL DESCRIPTION

Prior Instrument recorded in Book ____ page _____ of the deed records of ____ County, _____

, further agree as follows:

(1) PRICE AND TERMS: Buyer agrees to pay for, and Seller agrees to sell the Property for the sum of $_____, the net sum to be paid in cash, certified check, cashier's check, or building and loan check at closing.

(2) OPTION FEE. This Option is granted without a fee.

(3) ASSOCIATED LEASE. Simultaneously with the execution of this Option the parties have entered a Lease Agreement dated _____.

(4) INCLUDED IN THE PURCHASE: The property shall also include all land, together with all improvements thereon, all appurtenant rights, privileges, easements, buildings, fixtures, heating, electrical, air conditioning fixtures and facilities, window shades, Venetian blinds, awnings, curtain rods, screens, storm windows and doors, affixed mirrors, wall-to-wall carpeting, stair carpeting, built-in kitchen appliances, bathroom fixtures, radio and television aerials, landscaping and shrubbery, water softeners, garage door openers and operating devices, and all utility or storage buildings or sheds. The property shall also include the oven/range and refrigerator contained on the premises at the time of the execution of the attached lease; however, the condition of these appliances is not warranted.

(5) TITLE: The Seller shall convey marketable title to the property with the above-described inclusions, by good and sufficient General Warranty Deed in fee simple absolute, with release of dower, on or before closing; said title to be free, clear, and unencumbered, except for restrictions

and easements of record. Seller shall convey said title to the Buyer, or to any assignee of Buyer. Additionally Seller agrees that should Buyer assign this Option, Seller will cooperate in all ways to conclude the final sale, and shall if necessary enter into a purchase agreement with such an assignee, at the price agreed between Buyer and such an Assignee, paying to Buyer a fee, for the release of this Option equal to the difference between the price at which Buyer has assigned this Option and the Option Price, at closing

(6) CLOSING: The deed shall be delivered and the purchase money shall be paid at the lending institution or other location of the Buyer's choice, no later than SIXTY (60) days after notification to the Seller of the Buyer's exercise of the option. Seller shall pay all costs of a title search, prorated taxes through the date of closing, costs associated with releasing any liens, and any transfer taxes. Buyer shall pay all other costs of closing

(7) POSSESSION AND RIGHTS: Buyer shall have possession of the Property under the terms of the aforementioned Lease and shall have full rights to sub-let, list for sale, sell a subordinate Option, and in any other way to market the Property for sale. Buyer shall also have rights to any proceeds of an insurance claim by Seller resulting from any damage to the property.

(8) LEAD WARNING STATEMENT AND WAIVER. Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also presents a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended before purchase.

Investor hereby waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(9) ASSIGNMENT. This Option freely assignable.

(10) DURATION: This Option shall be in effect through _____, 20__ and shall be renewable at Buyers sole discretion for one year terms along with the associated lease. In the event of such renewals, all terms of this Option and the associated lease shall remain in effect except that the lease payment shall be changed in accordance with the provisions of the lease.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Option To Purchase agreement on this ___ day of _____ , 20___.

_____

, Seller

_____
, Manager_____, Buyer

State of _____, County of _____, ss:

BE IT REMEMBERED, That on this ____day of _____, 20__ before me, a notary public in and for said state, came _____ and _____, Manager of _____, LLC the parties to the transaction above, and acknowledged the signing thereof to be their voluntary act and deed.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

_____
Notary Public-State of Ohio
My Commission expires_____:

The instrument was prepared by: