Closing Commercial Real Estate Transactions

By Jerome E. Murphy
4700 Belleview Ave., Ste. 210
Kansas City, Mo. 64112
(816)753-2800
jmurphy@martinpringle.com

Introduction.

A real estate contract is an executory contract. The contract is signed by two or more parties, each of whom promises to perform in the future based on certain conditions. The seller can convey legal title to the buyer only by executing and delivering the deed. Typically, the buyer requires several other closing documents to satisfy the executory contract.

The closing is the point where title formally transfers and the parties deliver the other closing documents. One reason for having a closing is to mark, in a ceremonial way, the legal significance of what is happening. The closing displaces the old common law concept of livery of seisin, which required the seller to hand over to the buyer a fist full of dirt from the land.

I think it was around the year 1400 that we began to record titles and memorialize the livery of seisin with paper documents.

More importantly, we have a closing to ensure that all the closing conditions are concurrently met by the parties. I have closed some deals in Mexico and got a firsthand, close-up look at what happens when you do not use a third-party escrow agent to close a real estate transaction. Each party is a little reluctant to perform unilaterally fearing that the other party will accept unilateral performance without performing the reciprocal obligations. The buyer does not want to hand a large sum to the seller without the certainty that the seller is going to deliver the deed, and the seller is just as unwilling to deliver the deed without the assurance that the buyer will pay

for it. By having a closing and using a third-party escrow agent, each party can ensure that the other performs and that all conditions precedent are met before anybody leaves the room with any documents or funds. Closings can be conducted without gathering all the parties and their attorneys around a conference table, but all closings should be designed to attain this same effect. The ideal closing will proceed smoothly with the various parties signing their respective documents and departing with a concluded transaction. The more the lawyers have prepared for the closing in advance, the more likely they are to achieve that goal and satisfy their respective clients.

It all starts with preparation; the way to ensure a smooth closing is to start with contract drafting. Often your client will not engage you to advise him or her until after the contract is signed. If that happens, you are stuck with whatever language appears in the contract.

It all Starts with the Contract

If your client was wise enough to engage you to draft contract, you can insert detailed instructions for the closing and insure a smooth procedure. You can dovetail the specifics of closing and the requirements of the loan commitment into the closing portion of the real estate contract.

I will show you language from a standard form pre-printed contract and compare and contrast it to a long-form attorney-drawn contract. Here is language from the standard Kansas City Metropolitan Realtors contract:

4. PURCHASE PRICE: The purchase price is _____ DOLLARS ($_____) which Buyer agrees to pay as follows: _____ DOLLARS ($_____) at the signing of this contract as Earnest Money which is to be deposited UPON EXECUTION OF THIS CONTRACT in the insured trust or escrow account of _____ Title Insurance Company ("Escrow Agent") as part of the consideration of the sale; the balance to be paid in the following manner:

_____ DOLLARS ($_____), in guaranteed funds or cashier's check at Closing (as defined in this Contract), adjusted at Closing for prorations, closing costs and other agreed expenses, and [state other payment or financing terms] _____

5. CLOSING DATE: Subject to all the provisions of this Contract, the closing of this Contract (the "Closing") shall take place at the offices of _____ Title Insurance Company on the _____th day of _____, 20__ or prior thereto by mutual consent, and possession shall be delivered as follows: at closing

6. EXISTING FINANCING: Unless otherwise provided in this Contract, Seller shall make any payments required on existing mortgages or deeds of trust until Closing. If this Contract provides that the Property is being sold subject to any existing mortgage or deed of trust, Buyer shall, at Closing, reimburse Seller for any principal reductions not already considered in computing payments of purchase price and for any deposits held by the holder of the mortgage or deed of trust that are transferred to Buyer.

7. PRORATIONS: The rents, income and expenses from the Property, and the interest on any existing mortgages or deeds of trust to which this sale is made subject, shall be prorated between Seller and Buyer as of Closing. Seller shall pay all general real estate taxes levied and assessed against the Property, and all installments of special assessments for the years prior to the calendar year of Closing. All such taxes and installments of special assessments becoming due and accruing during the calendar year of Closing shall be prorated between Seller and Buyer on the basis of such calendar year, as of Closing. If the amount of any tax or special assessment cannot be ascertained at Closing, proration shall be computed on the amount for the preceding year's tax or special assessment. Buyer shall assume and pay all such taxes and installments of special assessments accruing after the Closing.

8. TITLE INSURANCE: Seller shall deliver and pay for an owner's ALTA title insurance policy insuring marketable fee simple title in Buyer in the amount of the purchase price as of the time and date of recordation of Seller's General Warranty Deed, subject only to the Permitted Exceptions defined below. Seller shall, as soon as possible and not later than fifteen (15) days after the Effective Date of this Contract, cause to be furnished to Buyer a current commitment to issue the policy (the "Title Commitment"), issued through _____ _____ (the "Title Company"). Buyer shall have fifteen (15) days after receipt of the Title Commitment (the "Review Period") in which to notify Seller in writing of any objections Buyer has to any matters shown or referred to in the Title Commitment. Any matters which are set forth in the Title Commitment and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions to the status of Seller's title (the "Permitted Exceptions"). With regard to items to which Buyer does object within the Review Period, Seller shall have until Closing to cure the objections. If Seller does not cure the objections by closing, this contract shall automatically be terminated unless Buyer waives the objections on or before Closing.

Let's compare these sections with the following provisions from a long form attorney-drawn contract for the purchase of an office building:

ARTICLE 5
ESCROW; CLOSING

5.1 Escrow Deposit Account. Within two (2) business days after the execution of this Agreement by both Purchaser and Seller, (i) the parties agree to open an escrow with the Escrow Agent for the purpose of completing the purchase and sale of the Property by delivering original executed counterparts of this Agreement for Escrow Agent's execution and return to both Purchaser and Seller, and (ii) Purchaser shall wire transfer the Deposit to Escrow Agent. The Escrow Agent shall execute counterparts of this Agreement and confirm the date on which escrow is opened. The applicable parts of this Agreement, together with the general form escrow provisions of Escrow Agent, if any, set out on *Exhibit G* attached hereto not inconsistent herewith shall be the escrow instructions for the Deposit and Escrow Agent's other undertakings hereunder. Escrow Agent may also from time-to-time request reasonable supplemental instructions which the parties agree to provide so long as they are consistent with this Agreement.

5.2 Closing Date; Place. Subject to and in accordance with the provisions of this Agreement, and provided all conditions set out herein to the closing of this transaction (the "**Closing**") shall have been satisfied or waived by the protected or benefited party (including those set forth in Articles 3 and 4 and this Article 5), the Closing shall occur at 10:00 a.m. on the date (the "**Closing Date**") which is fifteen (15) business days after expiration of the Inspection Period, at the offices of Escrow Agent at 1220 Washington Street, Suite 102, Kansas City, Missouri 64105, or at such other place or time as may be mutually agreed to in writing by the parties. Neither party need be physically present at the Closing if such party participates therein by the delivery of all funds and documents required from such party to the Escrow Agent for handling in accordance with this Agreement and appropriate closing instructions.

5.3 Conditions to Purchaser's Obligation to Close. In addition to the other requirements, contingencies and conditions elsewhere set forth in this Agreement, Purchaser's obligation to close this transaction is subject to and conditioned upon:

5.3.1 Receipt of Estoppel Letters. Seller shall use commercially reasonable efforts to furnish to Purchaser, prior to or simultaneously with the Closing, an Estoppel Letter Certificate in substantially the form of *Exhibit H* attached hereto or in such other form as may be provided for in an individual Office Lease (each, an "**Estoppel Letter Certificate**") from each of the Office Lease tenants for the Premises. In the event Seller, despite commercially reasonable efforts, is unable to obtain an Estoppel Letter Certificate from a tenant, Seller may certify to such information and in such case Seller shall be deemed to have warranted and represented the correctness of all the information supplied by Seller with respect to such tenant and Office Lease to Seller's actual knowledge. Said Estoppel Letter Certificates and any certifications in lieu thereof supplied by Seller must be reasonably satisfactory to Purchaser in that they must not disclose materially significant tenant defaults and/or materially significant pending claims by tenants against Seller as landlord with respect to the physical condition or operation of the Building.

5.3.2 Certain Actions by Seller. Seller shall have completed the following work or taken the indicated actions with respect to the Premises:

(1) Remove all tangible personalty owned by Seller which is not being purchased by Purchaser hereunder; and

(2) Provide all keys/codes/combinations for locks and access devices at the Premises in Seller's possession or under its control.

5.4 Parties' Obligations and Options Regarding Conditions. Each party agrees to use its reasonable best efforts to cause the conditions for which it is responsible to be satisfied hereunder. If Purchaser has performed its obligations hereunder and Seller, despite its reasonable best efforts, is unable to satisfy all conditions to the Closing for which Seller is responsible, or is unable to deliver title as specified herein, Purchaser, at Purchaser's sole option, shall either (i) waive such failure or default and, if applicable, accept such title as Seller can convey, and in either case without any reduction or abatement of the Purchase Price or (ii) exercise any applicable Purchaser remedies pursuant to Article 14.

5.5 Similar Seller Names. If a search of title or other records discloses judgments, bankruptcies or other returns against other persons or entities having names the same as, or similar to, that of Seller, Seller will deliver to Purchaser and the Title Company an affidavit that such judgments, bankruptcies or other returns are not against Seller and such affidavit shall otherwise be in such customary form and content reasonably satisfactory to Seller, sufficient to permit the Title Company to remove such judgments, bankruptcies or other returns as exceptions to title.

5.6 Discharge by Seller of Monetary Encumbrances. On the Closing Date, with respect to any Monetary Encumbrance which Seller is obligated to pay or discharge, Seller may use any portion of the Purchase Price to satisfy the same, provided:

5.6.1 Seller shall deliver, or cause to be delivered, to the Title Company, prior to the Closing Date, instruments in recordable form and sufficient to satisfy, release or discharge such Monetary Encumbrances of record, together with monies (if any shall be required in excess of the net sale proceeds to which Seller is otherwise entitled) sufficient for the cost of recording or filing said instruments; or

5.6.2 Seller shall deposit with the Title Company sufficient monies (if any shall be required in excess of the net sale proceeds to which Seller is otherwise entitled) acceptable to the Title Company to insure the obtaining and the recording of such instruments of satisfaction, release, discharge or re-conveyance in accordance with payoff letters from the Seller's lenders, if any.

The existence of any such Monetary Encumbrances shall not be deemed objections to title if Seller shall comply with the foregoing requirements and the Title Company shall take no exception therefor or shall insure the Premises against such matters or shall insure against enforcement of any such Monetary Encumbrance against the Premises.

5.7 **Seller Closing Deliveries.** On or before the Closing Date, Seller shall execute, acknowledge and/or deliver or cause the execution, acknowledgment and/or delivery, as the case may be, to Escrow Agent, the following:

5.7.1 The Deed.

5.7.2 A bill of sale and general assignment in form (the "**Bill of Sale/Assignment**") reasonably satisfactory to Purchaser and Seller, providing for the assignment and transfer to Purchaser without warranty of all transferable personalty to be conveyed to Purchaser hereunder, including any transferable permits, licenses, and other governmental approvals with respect to the ownership, use and occupancy of the Property; provided, however, Seller shall furnish Purchaser with copies of any transferable warranties or guaranties for any part of the Property in Seller's possession or under its control.

5.7.3 The originals (if in Seller's possession or under its control, otherwise photocopies) of any permits, certificates of occupancy, zoning certificates, and other governmental permits and licenses in connection with the ownership, use, operation or maintenance of the Property ("**Permits**").

5.7.4 The originals of the Assigned Service Contracts and the Office Leases.

5.7.5 The Assignment and Assumption Agreement for the Assigned Service Contracts and Office Leases.

5.7.6 A Certificate executed by each tenant-in-common comprising Seller setting forth its address and federal tax identification number and certifying that it is a "United States Person" and that it is not a "foreign person" in accordance with and/or for the purpose of Section 1445 (as may be amended) of the Internal Revenue Code of 1986, and any regulations thereunder (the "**FIRPTA Certificates**").

5.7.7 A Closing Statement in standard form prepared by the Title Company in accordance with this Agreement and approved by Seller.

5.7.8 The Tenant Estoppel Certificates.

5.7.9 Such other documents as are required by the provisions of this Agreement or otherwise reasonably required by the Title Company in order to issue the Title Policy in accordance with this Agreement, including an affidavit for removal of standard printed exceptions relating to rights of parties in possession and mechanic's liens (but not survey exceptions), and pay-off letters from Seller's lenders, if any.

5.8 **Condition of Property at Closing.** As of the Closing Date, Seller shall deliver possession of the Property to Purchaser in the condition required by this Agreement.

5.9 **Purchaser Closing Deliveries.** On or before the Closing Date, Purchaser shall execute, acknowledge and/or deliver to Escrow Agent:

5.9.1 The balance of the Purchase Price, subject to prorations and apportionments as set out in Section 2.2, payable in accordance with the provisions of Section 2.1.

5.9.2 The Assignment and Assumption Agreement for the Assigned Service Contracts and Office Leases.

5.9.3 A Closing Statement in standard form prepared by the Title Company in accordance with this Agreement and approved by Purchaser.

5.9.4 Such other documents as are required by the provisions of this Agreement or otherwise reasonably required by the Title Company in order to issue the Title Policy in accordance with this Agreement.

5.10 **Escrow Agent Closing Duties.** On the Closing Date, Escrow Agent shall effect the Closing by:

5.10.1 Recording all documents as may be necessary to clear title in accordance with the requirements of this Agreement;

5.10.2 Recording the Deed;

5.10.3 Paying all closing costs and making all prorations in accordance with the terms of this Agreement and the Closing Statement(s) of adjustments and prorations prepared by the Escrow Agent/Title Company and approved by Purchaser and Seller and delivered to Escrow Agent on or prior to the Closing Date;

5.10.4 Delivering to Purchaser the Title Policy (or binding commitment to issue the same), Escrow Agent's certified Closing Statement, the Bill of Sale/ Assignment, the Assignment and Assumption Agreement executed by Seller, the Permits and FIRPTA Certificates; and

5.10.5 Delivering to Seller the Purchase Price, plus or minus closing adjustments and prorations, the Assignment and Assumption Agreement executed by Purchaser, and Escrow Agent's certified Closing Statement.

5.11 **Delivery of Keys and Possession.** Upon advice from Escrow Agent that the Closing has been effected in accordance with this Article 5, Seller shall deliver all keys, access devices and codes to the Premises in the possession or control of Seller together with physical possession of the Property to Purchaser.

5.12 **Party Responsible for Costs.**

5.12.1 Seller shall pay (a) the fees necessary to (i) release and record the satisfaction of all Monetary Encumbrances and (ii) all amounts necessary to discharge any other liens and other matters, if any, encumbering or affecting the Property which Seller may have elected to remove; (b) the fees and expenses of Seller's Counsel; (c) the conveyance, transfer and recording taxes and recording fees imposed by state, county and local authorities on the recordation of the Deed; (d) all costs and expenses for title insurance premiums and expenses for the cost of the Title Report and the Title Policy to be paid by Seller as provided in Section 3.1; (e) one-half of the Escrow Agent's/Title Company's closing fees and costs and (f) one-half of any sales taxes on any personalty conveyed to Purchaser by Seller hereunder.

5.12.2 Purchaser shall pay (a) the cost of any Engineering Study or Environmental Study prepared for Purchaser pursuant to Section 4.1 or 3.2 and all other inspections, tests, studies, reports, investigations and inquiries undertaken by or on behalf of Purchaser; (b) the fees and expenses of Purchaser's Counsel; (c) any title insurance endorsements to be paid for by Purchaser under Section 3.1; (d) one-half of the Escrow Agent's closing fee and costs; (e) the fees necessary to record the Deed (and any Purchaser financing documents); and (f) one-half of any sales taxes on any personalty conveyed to Purchaser by Seller hereunder.

ARTICLE 6
SELLER'S COVENANTS PENDING CLOSING

6.1 From and after the end of the Inspection Period to and including the Closing Date:

6.1.1 Except as otherwise provided herein, and except for the purchase of materials, inventory and supplies in the ordinary course of business operations, Seller shall not execute any leases, contracts, licenses or other contracts or agreements affecting the Property beyond the Closing Date without Purchaser's prior written consent, which consent shall not be unreasonably withheld.

6.1.2 Operate the Property only in the ordinary course of business and substantially in the same manner as it is being operated as of the date of this Agreement.

6.1.3 Maintain the Property in substantially the same manner as it is being maintained as of the date of this Agreement, normal wear and tear and casualty damage excepted.

6.1.4 Maintain its current liability insurance on the Premises.

First, in the Board of Realtors contract, you just get the basics. Paragraph 5 specifies a date and a title company. Paragraph 7 is a short paragraph describing the Prorations. Rents, income and expenses are all apportioned through the closing date. Also the contract apportions taxes and special assessments for the calendar year of closing; if the tax or special assessment cannot be ascertained at closing, then proration is based on the preceding year's tax or special assessment. This can be a problem during periods when tax assessments are fluctuating. If tax assessments are going up as they did during 2007-8, then it is unfair to the buyer, who will get an unexpectedly large tax bill. If tax assessments are going down, as they did in 2009-10, then it is unfair to the seller, who will not be able to take advantage of the reduced tax bill.

Now let's look at Article 5 in the long form ABA-style office building

contract. Note that the date and time are specified, and clause 5.2 states that neither party need physically be present. Clause 5.1 clearly sets up an escrow deposit account into which one party will put money and the other party will put documents. Note that the same clause incorporates by reference an Exhibit G, an escrow agreement containing the specific escrow terms. In clause 5.7, we find a detailed listing of the required deliveries from the seller, including the deed and eight other document categories. In clause 5.9, we find a detailed listing of the required buyer's deliveries, including the purchase price and three other categories of documents. What would happen, using the Board of Realtors contract, if the seller neglected to deliver the original leases but did deliver the deed to the property? Would the buyer be obligated to close? Note that in the Board of Realtors contract, the only articulated seller's duty is to deliver the deed.

Note how much more detail is provided in clause 5.12 of the ABA-style contract than is provided in paragraphs 7 and 8 of the Board contract. Under the board contract, it is unclear who is obligated to pay for recording which documents. Under paragraph 5.12 in the ABA-style contract, the seller pays to file any release documents and the buyer pays to file the deed and any financing documents. Under the Board contract, it is clear that the seller must buy the title insurance, but it is unclear, who must pay for special endorsements, if any. Under the long-form contract, seller pays for a title insurance policy and the buyer picks up the cost for any special endorsements. Clause 5.12 of the ABA contract has additional helpful detail regarding the other costs of closing.

The Closing Checklist

After the contract is written and signed, the next step is to prepare a

closing checklist. This checklist should enumerate every matter that someone should address before closing and should allocate the responsibility for completing these various items. I have attached a sample closing checklist as **Appendix A.** I often prepare the closing checklist and distribute it to the other parties to ensure that everyone has agreed to the same division of labor. One time I prepared a closing checklist and sent it off to opposing counsel and he responded to me with an e-mail telling me that he was not bound by my closing checklist. Of course he was correct; the governing document that controls the parties' duties is the contract, but it is very helpful to have this checklist to make sure that at least you, your own client and the title company are all on the same page. For example, it is helpful to know before the closing whether the title company, the buyer, or the seller is going to draft the deed. This detail and many just like it can be ironed out before the closing by circulating a closing checklist.

Just because one lawyer has received a closing checklist from another party does not excuse that lawyer from ensuring completeness from the perspective of that lawyer's client. I usually prepare my own closing list from the standpoint of my client and circulate it to the other side. I usually do it without waiting to see what the closing list from opposing counsel will look like, but I am always pleased to get a checklist from opposing counsel to cross check my work.

As I mentioned earlier, the real estate agreement really should lay the foundation for what is going to be in the closing checklist. The typical long-form ABA type contract contains representations and warranties, covenants, conditions and required deliveries at closing. Each party with an interest in the real estate contract should review the contract carefully and should

include every unresolved matter on the checklist. Each party should verify the accuracy of the representations or the performance of the various covenants and should note that fact on its checklist. If you refer to Exhibit A, you will note that I cross-reference each item in the closing checklist to the relevant paragraph number of the contract.

The section on pre-closing conditions and the section on closing deliveries will make up the bulk of the closing checklist. Usually, each party has an obligation to close or to deliver a deed contingent upon a number of events having occurred. Often these events require the delivery of certain documents and including these items on the checklist will remind the attorney, as well as the client, that the document is drafted, negotiated, completed, and ready for execution at closing. Other closing contingencies may involve the examination, review and approval of external items; for example, certificates of good standing for the seller or tenant estoppel certificates. You can remove some stress from closing the transaction by listing these open matters and checking them off in advance of closing. The actual conveyancing documents themselves probably cannot be delivered until the closing day; however, forms of those documents can be easily circulated and agreed upon in advance. If the form conveyancing documents are agreed upon and attached to the contract, the process is even smoother.

It is important to keep the lender or the lender's attorney in the circulation loop. A loan commitment ordinarily follows the format that is similar to the contract and will contain its own representations, warranties, and conditions. By complying with those requirements, and circulating many of them in advance to the lender, you can make the lender feel more comfortable that you can close on the contract and also meet the affirmative

covenants of its loan. The latter is important because if you cannot meet the requirements of the loan commitment letter, your sale is not going to close.

The title company undertakes certain obligations in the title commitment and other documents usually create similar responsibilities in other parties. Each lawyer for each party should review the documents to make sure that all the obligations appear on his or her closing checklist. I keep a copy of the checklist and update it frequently as new matters arise.

As you can see from the attached **Appendix A**, my initials are often next to the initials of my client on a variety of line items. This is to help me supervise the activities of my client and other lawyers in the office to make sure that each line item gets completed. For example my client, not I, will secure the tenant estoppel agreements; but I will draft the language of the tenant estoppel agreement and I can remind my client to pursue the tenants and get the necessary signatures. By circulating the closing checklist, I can help my client, the title company, and the realtor remember their respective roles and more likely ensure a smooth process all the way to closing.

Some of the items on the closing checklist will involve the payment of funds and the allocation of costs and expenses. The final proration probably cannot occur until the day of closing; however, the lawyers should have a rough idea of what the prorations will be and what methods will be used to allocate them.

Document Preparation

One of the main jobs of the lawyer prior to closing is to prepare and approve the various documents that are going to be executed and delivered at

closing. Besides the loan documents that have to be negotiated and drafted, the lawyers must negotiate, draft and prepare the conveyancing documents, including some to effect the transfer of title to personal property, and some to accomplish more general matters.

The lawyer should be careful to observe the formal requirements when preparing these documents. If a particular document must be acknowledged before a notary public, and the parties should include an appropriate and lawfully authorized acknowledgment form. The Kansas Uniform Law On Notarial Acts can be found at K.S.A. §53-501. It specifies permissible acknowledgment formats. The equivalent can be found in the Missouri statutes at RSMo. §486.330.

If the local recorder's office requires the documents meet certain color and size requirements, lawyers must prepare documents that meet those requirements. In this day of computer imaging, most of the recorders require that the signatures be in a color that is receptive to computer imaging, which would exclude yellow, pink and other light-colored inks. On both sides of the state line, the recorders will require a 3 inch space at the top of the page and at least a 1 inch margin. I know of no minimum type size required in a state of Kansas; the recorders do have the authority however, to reject documents that are not sufficiently legible and susceptible to computer scanning. In Missouri, the minimum type face is 8 point. The requirements in Missouri were revised effective January 1, 2002, can be found at RSMo. §§59.005, 59.310 and 59.313. *See*, **Appendix B**. I called the Johnson County Records and Tax Administration and they do not believe their documents requirements are codified in the Kansas Statutes.

Documents may be recorded when written in a foreign language but

they must be accompanied by a sworn translation into English. RSMo. §442.140.

Form Documents

Many lawyers make the mistake of overreliance on forms prepared by other lawyers or found in forms publications and books as a basis for preparing their own documents. The prudent lawyer will use great caution when using any form prepared by anyone else and that would include the forms which are attached to these CLE materials. The attorney must take care to modify the form to fit the particular transactions involved and the jurisdiction that is applicable.

Deed

The deed is the main conveyancing document that the seller uses to transfer title to the property to the buyer. If the proper form is not used, there is no effective conveyance of title; and if the deed is valid but not in proper recordable format then the buyer will be unable to record it and to put the public on notice of the transfer of title. So the deed is the most important conveyancing document at the closing and should be prepared with care.

Most states recognize three different kinds of deeds, a general warranty deed, a special warranty deed (or a limited warranty deed), and a quitclaim deed. With the general warranty deed, the seller conveys title and also warrants against a wide range of imperfections arising during and prior to the seller's period of ownership. If any of these title defects should arise, the seller must compensate the buyer up to the amount of the consideration that the buyer paid. A special warranty deed or limited warranty deed is similar to a general warranty deed, but the seller takes responsibility only for

the title defects arising during its own period of ownership. Of course, the quitclaim deed is one wherein the seller includes no warranties and merely conveys to the buyer whatever title the seller has, if any. The type of deed that is to be conveyed is almost always specified in the real estate contract so the lawyers and the parties know from the outset what type of deed must be prepared and delivered.

The language of these three types of deed is brief and standardized so the job of drafting the deed is not difficult. While Kansas law does not require any specific form of granting language, a statute does provide that the use of the phrase "conveys and warrants" will be effective to convey property with statutory warranties (KSA §58-2203), and another statute provides that the use of the word "quitclaims" is sufficient for conveyance without warranty (KSA §58-2204).

In Missouri, no particular words of grant are required. Any words showing a clear intention to convey will satisfy the requirement for words of grant, but the words "grant, bargain and sell" have been made statutory words of grant for general warranty deeds. § 442.420, RSMo. 1994. By custom, however, the words of grant for general warranty deeds have been enlarged to “grant, bargain and sell, convey, and confirm." Missouri has no statutory words of grant for either special warranty deeds or quitclaim deeds. By custom, "sell and convey" are the words of grant used in special warranty deeds. The words "remise, release, and forever quitclaim" ordinarily are used as the words of grant in quitclaim deeds. If someone else drafts the deed, be sure to check the habendum clause to make sure that the grant words match the title. If the top of the deed form says “Warranty Deed” and the habendum clause reads “grant, bargain and sell, convey and confirm *all of his*

right, title and interest in Blackacre to the grantee", then you have been given a deed that converts a general warranty deed into a quitclaim deed. McAboy v. Packer, 187 S.W. 2d 207 (1945) and Stoepler v. Silberberg, 119 S.W. 418 (1909). In St. Louis, the deed must be signed by the grantees.

The deed should follow the common law or statutory language closely and there should be little for the parties to negotiate. The parties should be sure that the title company and the lender find the language in the form of the deed acceptable. Forms of deeds used by the title companies can usually be found on their respective websites.

Spousal Rights

Although the dower and courtesy are no longer recognized in Missouri and Kansas, the homestead statutes of both jurisdictions require that the spouse join in any conveyance which is held jointly with the other spouse. RSMo §474.150; RSMo §513.475. The Missouri Supreme Court, in Etheridge v. Tier One Bank, 226 S.W.3d 127(Mo. banc 2007), found a deed of trust invalid from a husband as grantor/borrower when title was vested in the husband and wife as Tenants By The Entirety. Joinder by both spouses is also required in Kansas when a homestead is involved. A homestead is 160 acres of farmland or one acre within the limits of a town or city. KSA 23-201. See also, the Kansas Constitution, Art. 15, Sec. 9, which prohibits alienation of a homestead without the joint consent of husband and wife--but no property is exempt from sales or taxes or for payment of obligations contracted for the purchase of the property or for erection of the improvements.

The buyer and the seller both should confirm that the legal description is correct. It should match the description in the contract of sale and also the description in the title commitment (which, in turn, is a description that the title company used when it searched the title and committed to insure). The legal description found in the survey, in the mortgage, and in the assignment of leases and rents will also need to match exactly.

If the buyer and seller have agreed that the buyer will accept title subject to certain permitted encumbrances, then the deed customarily will list these "permitted exceptions" specifically, although the practices vary around the country and from title company to title company. Permitted exceptions might include existing mortgages that the buyer is assuming, existing mortgages to which the buyer's deed will be subject, ground leases, and covenants, servitudes, easements, and reciprocal easements. If the seller has disclosed the existence of these title encumbrances to the buyer, and the buyer has agreed to accept title subject to these encumbrances, then these exceptions often will be enumerated in the deed and thereby removed from the scope of the seller's deed warranties.

Corporate Documents (and Partnership, Limited Liability entities) Powers of Attorney

Usually, one or more of the contracting parties is a business entity. Corporations, partnerships, and limited liability entities, including limited liability companies and limited liability partnerships, must meet certain legal formalities and establish that the individual signing on behalf of the entity has the authority to do so. The lawyer representing each party should confirm that the other parties are properly formed in some jurisdiction and legally authorized to conduct business in the state where the property is

located (if the state where the property is located requires companies to qualify to business).

For example the Board of Directors of a corporation should pass a resolution authorizing the transaction and designating the persons authorized to sign the conveyancing documents on its behalf. Similarly, a limited liability company should have a meeting of the members to pass a resolution authorizing a manager or another designated person to sign the conveyancing documents.

If the bylaws of the corporation authorize written consent minutes, the resolution should be accompanied by consent minutes authorizing the action. If the bylaws of the corporation do not authorize written consent minutes, the resolution should be accompanied by a waiver of notice of the meeting at which the resolution was passed signed by all of the directors to avoid a subsequent claim by a disgruntled director that the meeting was improperly convened. The authorizing resolution should be written in broad terms to make it clear that the authorized signing person has ample authority to modify the conveyancing documents, should that become necessary at the closing. The corporation should also provide an incumbency certificate that lists these authorized signatories, states their titles within the organization, and includes specimens of their signatures.

Good standing certificates are typically ordered to verify that the corporation is in good standing in the state where it is organized as well as a state where the corporation is doing business.

Opposing counsel may want to review and approve the language of

these entity documents, and it might be wise to provide the proposed language to all the parties before your entity client grants its approval, just in case one of the other parties has a legitimate objection to the scope of the proposed authorizing language.

Partnership conveyancing documents, of course, must be signed by all the partners.

To the extent that any outside party must give its consent to any aspect of the transaction, the lawyer should be sure to include this approval on the closing checklist. Among the outside parties who may need to approve the transaction are: senior lenders, ground lessors, bankruptcy trustees, tenants, utilities, franchisors, and municipal corporations or other quasi-governmental corporations that may be parties to a development agreement.

Individuals, of course, need not give authorizations of this type; however, the issue of power-of-attorney arises when the individual cannot personally attend the closing and execute the necessary documents. If a power-of-attorney is not used, one has to execute the documents in advance and entrust them to counsel or to an escrow agent for delivery at the closing. The other parties may agree to such an arrangement, but this approach precludes the parties from making last-minute changes to the documents at the closing unless the client is available. If a client has executed a specific power-of-attorney authorizing the lawyer or a friend or trusted business associate, then the documents can be modified on the client's behalf at closing. However, the power-of-attorney should state clearly just how much latitude the attorney-in-fact has with respect to modifying the documents, so there is no dispute at the closing if the documents must be changed. Parties

must also be sure that the form of power-of-attorney complies with state law requirements. This is important because the power-of-attorney usually must be recorded in the land records along with the conveyancing documents so that subsequent searchers of title can establish the validity of the recorded document executed by an apparent stranger to title. Title companies (and state statutes) generally will not allow an all-purpose power-of-attorney; the power-of-attorney must be specific to the transaction and should refer to the property being conveyed.

See **Appendix C** for some specimen authorizing resolutions.

Bill of Sale

The bill of sale has greater or lesser importance depending upon the nature of the property being sold. If the transaction involves vacant ground, there is no need for a bill of sale. If the contract involves the sale of a shopping center or an office building, the bill of sale is usually of minor importance, because the only personal property that is typically conveyed consists of garden hoses and stepladders and the like. If the transaction involves the sale of a fully fixtured restaurant or a car wash, the personal property comprises a significant chunk of the transaction and the bill of sale is more important. The bill of sale is substantially the same as the deed to the personal property, and it accomplishes the same results as the deed. The bill of sale often contains an itemized list of all of the personal property that the seller is conveying.

Bills of sale may be "blanket" covering all personal property at a particular location, or itemized, covering specifically listed items. Tangible personal property is sometimes sold together in the same bill of sale with intangible personal property, such as contract rights, warranties, licenses,

permits, or accounts receivable. A form of a combination or "blanket" bill of sale is attached as **Appendix D.** Attorneys are reminded that state law may hold that certain warranties are implied in the sale of personal property.

Some personal property cannot be conveyed merely with a bill of sale, for example, motor vehicles and motor homes that require not only a bill of sale but also a certificate of title.

Personal Property Tax Issues

The lender will also have concerns about personal property. It will not only want reassurance that the seller has conveyed all of the significant personal property to the buyer, but it will also want to perfect a security interest in the personal property. The buyer grants this security interest to the seller by executing a security agreement, and the lender perfects its interests by having the buyer execute a UCC financing statement (UCC-1). These transactions are governed by Article 9 of the Uniform Commercial Code. Attorneys are reminded that in order to perfect a security interest under the revised Article 9, one must file the UCC-1 in the jurisdiction where the debtor is organized, not where the property is located. The lawyer must remember to pay attention to the sales tax consequences of this aspect of the transaction. The contract should have already addressed the responsibility for paying these costs, and any potentially liable parties must be sure that the right amounts are tendered to the right taxing authorities. Care should be taken to make sure that the sales taxes appear on the settlement sheet and are paid to the appropriate authorities by the title company.

Title Insurance

The chief concern for counsel to the buyer is to make sure that someone has addressed all of the outstanding problems disclosed on the title commitment and that lender's counsel is happy with the commitment. By preparing the initial title commitment, a title insurance carrier has expressed its commitment to provide insurance on the terms enunciated. As we approach closing, the buyer's and the lender's counsel should have made their objections and the parties and the title company should have taken steps necessary to address each objection. If the objections have not been resolved to the satisfaction of the parties by the time of closing, the buyer or the lender may refuse to close (we assume that the contract contains the necessary title contingencies).

The most important part of the title commitment will be found in the list of title exceptions that normally appears on Schedule B-2 of the title commitment. Counsel for the buyer and lender will want to remove all the exceptions that the parties did not agree upon in advance. If there is an existing mortgage that encumbered the title to the property, the seller or the title company should locate the record-holder or its successor-in-interest and obtain and record a satisfaction. Alternatively, the title company should get a payoff letter and a commitment to release the mortgage on payment. If there was a mechanics' lien on the property, the seller should have paid off the mechanic or bonded over the obligation. By the time the parties get to the closing table, the only exceptions remaining on Schedule B-2 should be those that the parties agreed upon in advance, such as mortgages to be assumed by the buyer or acceptable reciprocal easement agreements, utility easements or any newly discovered matters that the buyer and lender deem to be of minor consequence. Ideally, the parties have attached a list of permitted exceptions as an exhibit to the contract or as an exhibit to a letter

accepting or rejecting title conditions. If so, the Schedule B-2 of the title commitment of closing should parallel the list of permitted exceptions.

In converting the title commitment to a title policy, the title company should update Schedule A of the owner's policy and the mortgagee's policy to list the new owner on the owner's policy and the new lender on the lender's policy and their successive interests in the property and the date and time of the last title search. Schedule A of the policy should also reflect any last-minute changes in the total amount of the insurance caused by changes to the contract such as the amount of the sales price or the loan amount.

Unless your title company has the capacity for electronic recording, there is likely to be a gap of time between the time when the title insurer checks the land records for the last time and the time when the title company records the deed and other conveyancing documents. This gap of time poses a problem because some party with a prior interest in the property could record an old document after the title search or some seller could fraudulently sell the property to another party. To protect themselves, the title companies usually put standard language in their title policies to exclude problems that arise during the "gap." Counsel for the buyer and the lender should ask that the exception relating to the "gap" be removed or that there be added a "gap" endorsement.

In the old days, the careful title insurer would usually send a title searcher to the recording office to conduct what is called a "date down" search to perform a last-minute update and phone in any changes just before the seller delivers the deed. The gap in Jackson County several years ago was as long as six months. But Jackson County is gone from the ridiculous to

the sublime; they now have electronic recording, and title companies can conduct a "date down" record right in their offices in real-time and virtually eliminate the gap. So the gap problem varies from county to county and state to state. It is important, however, to be aware of the problem and get the gap exception removed. Sometimes title companies will accept an affidavit and indemnity from the seller and on the basis of that affidavit will remove the gap exception. I understand that in some jurisdictions, there is a statutory legal duty of the seller to hold the sale proceeds in trust for the payment of any such title claims that may arise during the gap period.

If there is a title defect that the parties are not able to clear prior to or at the closing, they have to either terminate the contract for non-performance or postpone the closing until some method of working out the problem is achieved. Sometimes, the parties can convince the insurance carrier to insure over a particular problem; in other situations, the seller may be able to convince the buyer to live with the increased risk in exchange for a credit against the purchase price or the placement of moneys in escrow pending a resolution. A good contract will obviate these problems by providing for a time period during which the buyer can examine and get comfortable with the condition of the title.

An interesting question arose about what is or is not a "permitted exception" in JAS Apartments, Inc. v. Naji, 354 S.W.3d 175 (W.D. Mo. 2011). Naji and his wife owned the property as tenants by the entirety. Chicago Title issued a commitment that required Naji's wife to sign the deed as a requirement for title. The buyer did not object to title "matters" as required by the contract. The wife refused to sign the deed. The buyer sued for breach and Naji contended that the requirement was a "permitted exception"

because it appeared on Schedule B. The trial court ruled that neither party was in default and that the contract was terminated because of the inability of Naji to deliver title clear of his spouse's interest. The Court of Appeals reversed and the case was remanded and came up on appeal again. Finally after the second appeal, the Supreme Court ruled that Naji breached the contract and remanded the case for a damages hearing. The whole controversy in the courts of appeal turned on whether the buyer should have objected to the items on Schedule B-1--which were "requirements" rather than "exceptions." The Supreme Court held that the "requirements" are not a cloud on title and not something the buyer would be expected to review and object to.

Insured Closing Protection Letter

When they first start working with the title company, the attorneys for the parties should request what is called an "insured closing protection letter." Often the title company and escrow agent is a company which is merely a title agent for one of the large underwriters. The "insured closing letter" confirms that the large underwriting title insurance company stands behind the closing actions conducted by the agent. Obviously, if there is a defalcation by a closing agent, your client will want that loss covered by a large and rated insurance underwriter. You never know when the small guys are going broke—even the large companies can go down unexpectedly as LandAmerica did during the subprime crisis.

Payoff Letters And Satisfaction Of Existing Encumbrances

In most transactions, there is existing financing that needs to be

retired at closing. The existing mortgage should appear on Schedule B-2 of the title commitment as an exception, and the seller will plan to pay off this loan at closing from the sales proceeds. That is generally the custom and is understood; however, it is probably a good idea to put a clause in the contract that states that the seller has the option of paying off existing monetary encumbrances from the proceeds of sale. Otherwise, an obdurate buyer might insist that the seller is in breach because he appeared at the closing table, and tendered a deed without having removed an unpermitted monetary encumbrance. The seller probably cannot pay off its loan in advance, because it will not have the money to do so until the buyer delivers the purchase price and places the funds in escrow. The result of this, of course, is that the seller cannot deliver a deed of release on the existing mortgage and the title insurance company must be sufficiently comfortable that they can get a deed of release to go ahead and issue the policies for the buyer and his lender. Usually title insurance carriers are sufficiently comfortable if they can obtain in advance an acceptable payoff letter from the existing lender.

The payoff letter is just a letter from the existing lender that states the amount that the lender must receive before it will return the seller's note and execute and deliver a recordable satisfaction of the mortgage. The payoff amount changes daily of course. So the typical payoff letter typically states the amount of principal and accrued interest as of a target closing date, together with a per diem interest amount so that the parties can come up with the precise amounts needed for closing if the closing date is postponed a day or two.

If the title insurance company is not comfortable insuring over the

existing mortgage on the basis of the payoff letter, then the parties may have to place the closing documents and the funds in escrow until the existing lender receives its payoff and delivers the mortgage satisfaction to the closing table. That would be a highly unusual event in Kansas or Missouri, but it certainly could happen and in this day and age where are mortgages are routinely sold and resold it could take a long time to track down a release document.

Getting lenders to return the original notes and to deliver executed releases of mortgages and deeds of trust is difficult. Some states have legislation requiring the delivery of these documents within the stated time period. Missouri has such a statute: RSMo. §443.130 (deliver in 45 days or forfeit the lesser of $300 per day or ten percent of the mortgage). In Kansas, when the mortgage has been paid, such as at a closing, the closing agent or the lender can execute the entry of satisfaction of mortgage. K.S.A. §58-2309A.

Opinions of Counsel

In anticipation of closing, the attorneys should be sure that the required opinions are in progress, including letters that are to be prepared by others. Opinion letters are fairly involved and the attorney generally must review a number of entity documents as well as loan documents. These letters are often long and complex and opposing counsel will often want to review them before closing. The letter itself may not be required until the closing, but the lawyer had better remember to initiate the process of producing a letter much earlier than the day or two before closing.

One opinion letter trap in Missouri that you should be aware of is

RSMo §431.030 that says "All parts of any contract or agreement hereafter made or entered into which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted, shall be null and void." It is an 1887 statute, but it is still good law and is supported by a public policy argument.

Method of payment

A thorough contract of sale should list the acceptable methods of payment of the purchase price. In many cases, part of the purchase price will be paid in with consideration that does not involve the transfer of funds. Often the seller is providing financing and the buyer's consideration consists of execution of a note and mortgage in favor of the seller. In other cases, the buyer's consideration may consist of the assumption of part or all of the debt of the seller. To the extent that the buyer is providing this type of consideration, the method of payment should be evident from the contract.

Generally, the buyer will deliver funds either by certified check or by wire transfer. The contract should state which of these methods the parties have agreed to. If the seller is to be given a certified check, then the buyer must obtain the check prior to closing. If the seller is to receive a wire transfer of funds, then the buyer must arrange with its bank to wire the funds in a timely fashion. These processes make require some lead time. A Missouri statute requires that real estate settlement agents require good funds before they disperse from an escrow account. If the amount is in excess of $2,500 it must be conveyed to the settlement agent by means of certified funds. Otherwise a 10 day period is required to allow the check to clear. See RSMo §381.412. In advance of the closing, the buyer needs to learn the name

of the bank where the title company funds are to be wired, the number of the recipient's account, the method by which it must initiate a transfer on the closing day, and the name of a contact person and phone number in each bank in case something goes wrong.

The seller and her attorney should have reviewed the note and mortgage prior to signing the contract to make sure that there are no overlooked yield maintenance clauses or prepayment penalties. These can be economically prohibitive and clients sometimes forget that they are in the loan documents.

In addition to consideration for the purchase price, there are other funds that usually change hands at closing. These are in the form of offsetting accounting adjustments netted out against one another and added to or subtracted from the purchase price. If the amount of these adjustments is likely to be substantial, then the parties should calculate the adjustments far enough in advance so that the certified check or the wired funds can reflect on that adjustment. If there is a minor variation due to a one or two day closing delay, the difference is sometimes made up by a personal check for minor adjustments.

Insurance coverage

Counsel for the buyer and the lender will insist that all required casualty insurance be in effect as of the closing date. Lender typically will require proof of insurance so that the value of its security is unimpaired and the buyer is not exposed to an uninsured risk of a personal injury action. The buyer should have contacted his insurance broker well in advance of the

closing. The insurance broker typically will provide the buyer and the lender with certificates that describe the insurance that has been provided and bound. Counsel for the buyer will also want to examine a copy of the insurance policy and review that policy carefully to make sure that there are no undesirable exclusions. It has become fashionable in recent years for insurance carriers to exclude mold damages, and it may make sense to get an endorsement to the policy for that coverage. The buyer and the buyer's attorney may want to consult with an independent insurance consultant who is knowledgeable about insurance matters and who can determine the adequacy of the policies to comply with the needs of the various loan documents and the practical needs of the client.

Tenant Documents: Tenant Estoppels and SNDA Forms

Multi-tenanted commercial properties, such as office buildings and shopping centers, usually focus on the leases because the leases comprise a huge component of the value of the property. Usually the buyer will require that the seller deliver tenant estoppel forms from all or from a majority of the tenants (or tenants representing a certain amount of the square footage). A sample tenant estoppel form is attached as **Appendix E-1**. This form is signed by the tenant and states whether or not there are any outstanding alleged breaches of the lease by the landlord, verifies the amount of the rental deposit, and states that there are no prepaid rents. These forms are usually circulated and signed up by the real estate brokers for the buyer and seller. They are an excellent technique for finding out about latent problems with the building and which tenants are going to be difficult. The tenant estoppel form is typically agreed upon between the parties during the due diligence stage of the contract and the forms are often attached to the

contract as an exhibit. Often, the tenant will not want to sign the tenant estoppel form just to create a problem for the outgoing landlord or to get some leverage. In those cases, the parties to the contract can use a "substitute tenant estoppel" form wherein the selling landlord warrants the contents of the substitute form. See the attached **Appendix E-2.**

Subordination, Non-Disturbance, and Attornment Agreement forms are often required by the prospective lender for the buyer. Because the lease is prior in time to the new mortgage being placed by the buyer, the lease primes the mortgage unless or until the tenant enters into a subordination agreement. The tenant is under no obligation to enter into a subordination agreement unless such an obligation is contained in the lease. However, tenants often agree to subordinate their leases to the new mortgage if they lender will agree to non-disturbance provisions, which allow the tenant to remain in the leasehold without being disturbed. A sample SNDA form is attached as **Appendix F.**

Employment agreements, service contracts, and other agreements.

The buyer may wish to receive an assignment of the seller's rights under employment agreements, service contracts, franchise agreements, licenses, etc. The effective transfer of any of these rights is likely to require the consent of a third party. The buyer should have raised these matters during the negotiation of the contract of sale and the parties should have reached a resolution of any of these issues during the due diligence period. During the due diligence period, the parties should have been pursuing the necessary consents and preparing the appropriate documents needed to

complete the seller's transfer of these rights to the buyer. As part of their closing checklist, the buyer and lender should confirm that all of the required consents are in place so that the property can be transferred on the date of closing.

Liquor licenses and development agreements can pose special problems. Liquor licensing jurisdictions will likely want to examine the holders of these licenses carefully and the seller will likely lack the legal authority to transfer its license to the buyer without consent of the regulators. In Kansas City, the liquor licensing process averages 120 days, so the buyer really needs a lengthy due diligence period to be sure that he can secure a liquor license. Development agreements with municipalities or with quasi-governmental corporations often need the approval of those entities to assign a development agreement. The city councils or the boards of directors of these various entities meet only so often and it may take a month or two to get on their calendar to get approval of such an assignment.

Utility readings

The buyer will either take over as the seller's existing accounts or establish a new relationship with each utility provider. Usually, it makes more sense to do the latter. It is in the seller's interest for the buyer to open a new account, because otherwise, the seller may have some continuing liability having never terminated the account. In either instance, the parties must insist that the appropriate utility companies come and read their meters at approximately the time of sale. Counsel should remind their clients to arrange these readings with the utility companies. Both parties should confirm that they have not been billed improperly for any connections

or disconnection that the other party should bear.

Calculating Closing Apportionments And Adjustments

In addition to the above listed utility apportionments, several other significant items will need to be apportioned as of the closing date, including property taxes, ground rent, lease to any property owners' association or similar organization, principal and interest on any mortgage that will survive closing, parking lot rents and incoming tenant rent. The contract should state the amounts that will be apportioned as of the date of closing along with the agreed-upon method of making these calculations. The parties need to obtain all of the information they need to make these calculations shortly before closing. They will need to know the amount due for the period that includes the closing date, the length of the billing period, and whether the seller has made payment in advance or the buyer will have to make the payment in arrears later on. After one of the parties has made these calculations, all the other parties should review them and point at any disagreements so that there is no dispute as to the net amount necessary to settle all matters at closing.

If the seller is holding security deposits from the tenants, the buyer should receive a credit on the settlement statement, because the buyer will have to reimburse the tenants when their leases end. Counsel for the buyer should crosscheck the amount of the proposed credit for security deposits against the cumulative total derived from the signed tenant estoppel forms (to make sure there is not a dispute between the tenant and the seller as to the amount of the original security deposit). If there are ground lease holders or service providers who are holding security deposits from the seller, the

seller needs to get a credit on the settlement statement, because those deposits would now be payable to the buyer pursuant to the assignments.

Calculating fees, commissions, taxes and other closing costs

Buyer's counsel is wise to pre-calculate the lender's fees, the lender's counsel fees and the brokerage fees just to double check on what the buyer needs to close. In addition, there are likely to be a variety of other taxes, fees and other charges imposed by government authorities. For example, in Kansas, the county collects a mortgage tax of .026% of the indebtedness and a per-page recording fee. The Internal Revenue Service may demand withholding of some of the purchase price if the seller is a foreign entity. A city may have a lien for unpaid taxes.

Notices

Closing of a commercial property usually means that someone needs to send official notice to someone else. The most obviously affected party would be the tenant. In Missouri, a new owner who is a successor landlord is not entitled to recover rent, unless she has first sent "adequate and timely notice" to the tenant. "Adequate and timely" notice means that the successor in title must notify the tenant of the means of transfer and the date of transfer and the notice shall be attached to a copy of the deed. RSMo §535.081.

Customarily this tenant notification letter comes in the form of a letter signed by both the buyer and the seller. For a specimen tenant notification letter, see **Appendix G.** These notices should comply with the notice provisions contained in the various tenant leases and should be delivered in

accordance with those provisions -- whether by certified mail or express delivery. Buyer's counsel should include these notices on their checklist and should prepare them in anticipation of closing. If the buyer is succeeding to the seller's rights under employment agreements, service contracts, or franchise agreements, the seller must send notices to those parties as well. These notices should comply with the notice provisions in the various contracts, and should be included on the closing checklist.

The Walk-Through

The buyer's attorney should consider putting a clause in the contract, which allows for re-inspection rights or a walk-through whereby the buyer or its authorized representatives may re-inspect the premises during the 48 hour period prior to closing to confirm that no material adverse changes have taken place on the premises since the expiration of the inspection period. Another purpose of the walk-through is to ensure that the seller has made all the repairs that it is supposed to make. If the parties perform the walk-through just before closing, the seller may not have time to resolve all of the punch list items before it conveys title to the buyer. The buyer, of course, will want these punch list items completed and charged to the seller. The buyer can agree to make these repairs and can receive a credit against the purchase price for the estimated cost; alternatively, the seller can agree contractually that it will make these repairs after closing. If that is the case, buyer's counsel will want to make sure that the covenants for post-closing repair will survive closing and not merge with the deed. If the latter method is used, the buyer will probably also want some money kept in escrow to cover the cost of the post-closing obligations. See **Appendix H** for a form of post-closing agreement.

The Settlement Statement

The escrow agent and the two parties should prepare a settlement statement that lists all transfers of funds that are about to take place at the closing and all transfers that have already taken place. The settlement statement serves several different functions. First, it memorializes and summarizes all of the transactions in one written document. It is the first thing that your accountant will want to see when he begins to prepare your tax returns. It is essential to both the buyer and the seller to determine their costs for purposes of basis and their gain or loss upon sale of the property. The settlement statement also helps the parties arrive at a single net dollar amount that must change hands at the closing rather than passing numerous checks back and forth to account for various minor closing adjustments and apportionments.

Some parties may prefer to use a HUD-1 form (which must be used for residential closings[†]) and others may prefer to use a more informal memorandum that they can put in their files. Some parties may prefer that certain closing costs, such as their own legal fees, and other due diligence fees not appear in the closing statement for confidentiality reasons. These amounts can be memorialized in an internal document rather than in a closing statement available to everyone at closing, but they should be documented in some form.

[†] The scope of this seminar is commercial real estate, so I have not discussed RESPA and the requirements that it imposes. RESPA requires that referral fees and other fees paid outside of closing either be put on the HUD-1 or be disclosed in writing.

Here are some things to watch for in the settlement statement besides just the correct names of the parties and proper prorations:

- Tax service fees - often you will see a charge on a settlement sheet for a tax service that is supposed to check the real property taxes every year to make sure that the property taxes get paid so that the lender's security is protected. You will want to check with the lender to find out if they actually are using such a service; often the taxes are included as part of the mortgage payment. If that is the case, there should be no charge for a tax service for the lender.
- On large deals of several million dollars, check to see whether the interest calculation is on a 360 day period rather than a 365 day period. The difference can be worth more than 20 basis points. Loan documents frequently provide for a 360 day proration but not always. For large transactions, you would want to know what basis was being used for each proration. 28 days? 30 days? 31 days? 360 days? 365 days?
- Section 1031 closings should acknowledge that the Qualified Intermediary is the seller acting for the selling party.
- Make sure that the prorations of rent reflect the actual rent and CAM paid instead of the scheduled rent. Determine, in a writing, who is going to collect overdue rent and on what basis. Buyers and Sellers often create little fiduciary traps for themselves by agreeing to turn over overdue rent to the other party.
- Make sure the inventory valuation is complete and listed on the settlement sheet. Check fuel oil or propane levels. Think about

utility deposits and large impact fees paid to utilities for subdivisions.

- Make sure that the amounts on the contract match the settlement sheet with no rebates that a lender would not know about—especially for residential loans to be guaranteed by the government.

Running A Closing

Structure Of A Typical Closing

The closing is the event that displaces the old "livery of seisin" because it is the time when the real estate actually transfers to the buyer. The central document is the deed, and unlike the contract of sale and the loan commitment, which are executory contracts, the deed actually operates to convey the property. The closing provides an opportunity for all of the closing conditions to be met simultaneously and no party has to worry that they have performed without receiving the reciprocal performance.

The "table" or "New York-Style" Closing

New York style closing is a "sit down" closing where the parties (or their authorized and empowered representatives) and their attorneys meet in the physical presence of each other to close a real property transaction. The typical closing usually takes place at the office of a title company or one of the attorneys. At this type of closing, the conveyancing documents are delivered to the title

company for recordation after the closing has ended, policies or the marked-up title commitments have been delivered to the parties and the loan is funded. There will be a "gap" of exposure to liability for the title company between the end of the closing and the time the instruments are actually recorded. At this type of closing all of the parties attend and are seated at a large table conferring with their lawyers and other advisers which also reminds them that something important is happening. There's a reduced likelihood that any person in the room could argue that they did not realize the significance of the event and that they thought this was a simple meeting to discuss future plans. At the table closing, all of the unmet conditions are simultaneously satisfied, except recordation which is left in the hands of a neutral third party. The buyer will not want to tender the purchase price to the seller until the seller's current lender delivers either a release of the current mortgage or a payoff letter stating the exact payoff that will trigger its release. The buyer's lender does not want to tender loan proceeds to the closing until it is confident that the mortgage that the buyer is delivering into escrow will be the first mortgage on the property. The seller does not want to execute and deliver the deed until it sees the buyer's certified check or confirms that the buyer has wired the funds. If all documents, parties, and money are in the same room at the same time, everybody can keep an eye on the events that are unfolding and can make sure that everyone is performing their obligations properly.

Historically, in New York City, after everyone showed up at the closing and all the documents were passed around a table, the title

company marked up the commitment and the deal funded without anything being recorded—but not outside of New York City. In the early 1980s there was more competition for title insurance business and title companies became more flexible and were more willing to take risks. We began to see escrow closings with gap undertakings, initially only when the parties had significant net worth, and eventually for everyone. Slowly, in the 1990's almost all commercial closings essentially became "New York style" closings in that the title company took the risk that the documents would be accepted by the recorder and that there would be no intervening document recorded. With the advance of technology and the internet, hardly anybody shows up at a closing in New York or anywhere else and just about everybody has gone to the escrow closing.

The Escrow Closing

Today almost all closings are escrow closings without all of the parties being present at the same time. The parties agree upon an escrow agent, who will serve as referee and keeper of the documents and funds. This escrow agent may be a title company or a representative of an escrow company, or a lawyer for one of the parties (although that is an unwise thing for the attorney because it creates an immediate conflict of interest). Usually it is a title company. Typically, the attorneys write a letter of escrow instructions, which instructs the escrow agent to deliver documents or money upon receipt of certain other documents or money from the other party. Examples of an attorney's escrow letters can be

found at **Appendix I**. If everybody does what they are supposed to do, the escrow agent will be authorized to release the documents and funds to the appropriate parties, as described in the escrow agreement. Once this happens the closing is completed, and title will pass as effectively as if the parties had conducted a table closing or a "New York" closing. Indeed, it is smoother. If one of the parties fails to perform, the attorney's letter of escrow instruction should instruct the escrow agent what to do next to protect the rights of the non-breaching parties. Today, with electronic filing, this type of escrow can be conducted with even greater certainty than the table closing, because the electronic filing is immediate and there is little need for gap coverage.

Using the Closing Checklist

If the parties and their attorneys have prepared for the closing properly then the closing should proceed smoothly. Each lawyer can follow his or her closing checklist and instruct the client to perform only if all of the parties have met their concurrent obligations. The seller will be content to execute the deed and deliver to the title insurance company if it knows that the deed will remain in escrow until the buyer delivers the purchase price. The buyer will be willing to deliver the purchase price, because it is advised by the escrow agent that the seller's executed deed has been delivered into escrow. For the parties and their lawyers, the closing should just be an exercise of following the checklist and ensuring that all parties meet all of their obligations and making sure that everybody leaves the room (literally or virtually) at the

end with the correct documents and funds.

Title Insurance

One of the conditions of closing for the buyer should be the receipt of either an acceptable title insurance policy or an acceptable irrevocable title commitment conditioned only on the performance of matters entirely within the insured party's control. In our region of the Midwest, it is extremely unusual to get an actual insurance policy at the closing in a clean and unmarked format. It does happen in other areas, and the title agent typically marks up the most recent title commitment and subscribes the word "insured" on the policy and signs it. In our area one of the items that should be on the attorney's checklist of post-closing duties is a reminder to confirm that when the original title insurance policy arrives, it conforms to the commitment. The lawyers for the buyer and the lender also need to confirm that the final policy contains all the necessary endorsements as agreed. Lawyers should also check to make sure that there are no exceptions for open mortgages that were to be paid out of the proceeds of the closing.

Execution and Acknowledgment of Documents

Shortly before the closing, the attorneys should confirm that the documents are in their final form. They should check to make sure that all of the exhibits have been attached, that all of the blanks have been filled in, and that all documents have been dated and

bear the correct attestation clauses. I find that it is helpful to label exhibits to documents with a parenthetical explanation underneath the exhibit number that explains what document to which the exhibit is supposed to be attached. For example, instead of in titling the exhibit merely "Exhibit A", it could be entitled "Exhibit A (legal description)." This type of additional information helps to prevent the mix-up of exhibits to documents. The lawyer should also make sure that the correct number of copies of documents are prepared for signature and that the signature lines and acknowledgment blocks of each document are tabbed for easy access. The lawyers should ensure that any of the prepared documents which are to be recorded comply with the technical requirements of the local recordation office as discussed above.

Note that any document that is notarized must be acknowledged before a notary public who is properly licensed in the state where the parties signed a document. And, depending upon the jurisdiction, the language used in the acknowledgment form must comply with the requirements established in the state where the property is to be transferred in a document is to be recorded. State forms vary and the states are not uniform in their willingness and legal authority to accept forms that differ from their own. Kansas and Missouri accept for recordation any conveyance acknowledged in accordance with the laws of another state. K.S.A. §58-2228. RSMo §442.150. Title companies are familiar with the acknowledgment requirements and are helpful resources. Much of that information can be found on the underwriting websites of the major title insurance companies. *See* Stewart Title:

www.vuwriter.com *and* First American: https://ul.firstam.com.

Multiple Copies

The attorney should consider in advance how many original signed versions of each document he will need. Usually, each party to the document likes to receive an original counterpart of the document and the lawyers for the parties often want originals for their files. Any document to be recorded in the public land records must be an original.

Of course, the borrower should never have signed more than one original note, unless the borrower wants to pay more than one note. A note is a negotiable instrument and the defenses of prior payment or lack of consideration will not defeat the claim of a holder in due course. If anyone wants a copy of the note, he should be satisfied with a photocopy, and it should be marked as a copy.

In Missouri and Kansas, there is less concern about delivering multiple originals of the mortgage or deed of trust, because generally the originals of the deed and mortgage have no special significance. Once it is recorded, the copy in the land records is generally admissible in evidence if a legal dispute arises. Note, however, that the state law in some other states may require the production of the original deed of trust before the public trustee will release the deed of trust in land records, so the holder of the deed of trust should treat it in the same careful way that it treats the original note.

Delivery and Distribution Of Funds

The person running the closing, whether it's a title company employee or an escrow agent, must be sure to carry out the disbursement function with care and the lawyers for each of the parties should confirm that this person is disbursing the funds correctly. The closing checklist and the settlement statement will be helpful in this matter. The closing checklist should specify all the matters that need to be addressed at the closing and the settlement statement should specify the amounts of any required payments and should net them out against one another.

The best way to transfer funds is by wiring them. Wired funds are immediately considered good funds. This obviates the need for a time period to wait for a check to clear. The disadvantage is that most banks stop sending wires at 3 p.m. and it is important to get all of the wires in motion early in the morning, especially if there is a necessity for double wires. To save time, it is helpful to send a memorandum to the wire room of the affected banks to give them a heads up on the details of the incoming transaction.

Post-closing matters.

It is wise for the attorneys of the parties to follow up and make sure that the conveyancing documents were properly recorded and that the documents were recorded in the proper order. After the recorder of deeds or the register of deeds has recorded the original

documents, that official will return the originals to the parties as designated. Depending upon the jurisdiction, this may take a period of weeks and it will be important for the lawyers to follow up and make sure that they get the original documents back.

Lawyers will want to make sure that all of the remaining non-recorded documents are distributed to the proper parties. The lender's attorney must make sure that the lender receives the original note which the lender should secure in a safe location. The lender should also receive originals of the mortgage, the assignment of leases and rents, all UCC-1 financing statements, and all other documents to which it is a party. The buyer's attorney should make sure that the buyer receives an original deed, a copy of the note, copies of all of the loan documents, originals of any other documents to which it is a party, and copies of any other relevant documents. It is important that the parties leave the closing with a copy of every single document delivered and executed. Sometimes a title company will promise to send copies to the parties after the closing; however, it is preferable for all the parties to leave with copies of the executed documents.

Organizing The File

One of the attorneys should probably take on the responsibility for organizing a formal closing binder after the deal is closed, at least for larger transactions. The closing binder, sometimes referred to as a "closing transcript," may take the form of a hard bound volume, a softcover volume, or a loose leaf binder but should

contain an index and a copy of every closing document in a sensible sequence. For example, the closing binder may group the sale documents together, followed by the conveyancing documents, followed by the loan documents, the title insurance documents, the corporate authorizations, legal opinions, and other miscellaneous documents. The lawyer may want to prepare a brief narrative summary of the transaction, including a list of all persons who attended the closing in their respective roles, and place it at the beginning of the binder. It is a good idea for the closing binder to note the book and page at which each of the recorded documents can be found in the recorder's office. This serves as a reminder to the attorney to follow up and confirm that the documents have been recorded and it allows for easier reference later on. Copies of the closing binder should be retained by the attorney, the client, and any other interested parties. A specimen of a table of contents for a closing binder is attached as **Appendix J.**

Once you have completed your closing binder and sent a copy to your client, you're ready for the next deal. It's customary, so don't forget to ask the real estate brokers to buy the drinks after you complete the closing!

APPENDIX A
(Closing Checklist)

THE MURPHY LAW FIRM
Attorneys at Law
4700 BELLEVIEW AVE., SUITE 210
KANSAS CITY, MO. 64112

PHONE 816-753-2800
FAX 816-753-2886
email jmurphy@kcnet.com

Real Estate
Pre-closing Requirements/Conditions
Closing Checklist
Wednesday, March 04, 2015

Item or Issue		Resp Party	Notes or Status
I.	**Pre-Closing**		
A.	Purchaser has until August 23rd to perform due diligence 5.3	Buyer/ABC	Done
B.	Purchase must give written notice of termination. If no notice-deemed waived 5.3	Buyer/JEM	Waived
C.	Purchaser to order updated Survey	JEM	Done
D.	Purchaser to examine Sched. B items and respond by August 1. 6.1	JEM	Done
E.	Purchaser to perform/update Phase I	CDF	Done
F.	Purchaser to perform Mechanical insp.	CDF	Done
G.	Purchaser to perform Roof insp.	CDF	Done
H.	Purchaser to abstract leases	CDF	Done
I.	Purchaser to Provide loan commitment by July 30 5.8	ABC	Done
J.	Attorney's Letter of Escrow Instruction	JEM	Drafted
K.	Pro-Forma Settlement Sheet	Stewart	Pending
L.	Review Loan Docs	JEM	Pending

1.	Promissory Note	JEM	Done
2.	Mortgage	JEM	Done
3.	Security Agreement	JEM	Done
4.	Assignment of Rents to Lender	JEM	Done
5.	Guaranty & Spousal Joinder	JEM	Done
6.	U.C.C. Financing Statements	JEM	Pending
7.	Certificate of Authority from ABC Holding Co.	JEM	Ordered
M.	Review Title Commitment	JEM	Done
1.	Update legal Description	Surveyor	Done
2.	Do Side Letter	JEM/CB	Done
II.	Closing Tue, September 28, 2008		
Purchase Agreement			Complete
A.	Seller's Deliveries 7.2		
1.	Deeds 7.2.a	Seller/CFB	Drafted
2.	Bills of Sale and Assignments 7.2.b & d	Seller/CFB	Drafted
3.	Lease Assignments 7.2.c	Seller/CFB	Drafted
4.	FIRPTAs 7.2.f	Seller/CFB	Drafted
5. 6.	Tenant Estoppel Certificates (75%) 7.2.i Including the six majors (orig.)	Seller/K&H	Done - Originals at Closing
7.	Leases & Correspondence 7.2.k	Seller/Block	Assembled
8.	Updated Rent Roll 6.4.1.e	Seller/Block	Pending
9.	Seller's Certificate of Reps & Warranties 7.2.o	Seller/CFB	Pending
10.	Tenant Notification Letter 7.2.m	Seller/CFB	Drafted
11.	Mechanics Lien etc. Affidavit 7.2.g	Seller/Stew	Pending
12.	Kansas Transfer Affidavit 7.2.e	Seller/Stew	Pending
13.	All business and accounting records 7.2.j	Seller/Block	Pending
14.	Keys 7.2.l	Seller/Block	Pending
15. (a) (b)	Seller's Authority to consummate trans 7.2.n Certified Partnership Agreement & Amendments thereto Consent or Resolution of all Partners	Seller/CFB	Pending
16.	Settlement Statement 7.2.h	Seller/Stew	Pending

(a) Determine rent prorations (b) Determine tax prorations (c) Determine payments due on service contracts (d) Determine utility prorations (e) Determine operating expense prorations (f) Prepare schedule of rents, prepaid rents and security deposits (g) Confirm w. writing correct amounts of above (h) Brokerage commission (i) Transaction Costs at Closing			
17.	Deeds of Release of Mortgage with (a) Pitney Bowes assigned to Pru & Amended & Restated (b) UCC-3 Termination of the two UCC-1's filed by Pru	Seller/CFB/Stewart title	Pending
18.	Original Title Policy per Escrow Letter	Stewart tit	Pending
Purchaser's Deliveries to Seller			
1.	Wire Purchase Price 7.3.a	Buyer/Lender	Pending
2.	Bill of Sale	Buyer/JEM	Drafted
3.	Lease Assignment & Assumption 7.3.b	Buyer/JEM	Drafted
4.	Service Agreements Assumptions 7.3.c	Buyer/JEM	Drafted
5.	Tenant Notification Letter	Buyer/CDF	Drafted
6.	Evidence of Purchaser's Authority to consummate 6.4.3.b	Buyer/JEM	Pending
7.	Title Policy	Buyer/JEM	Done
8.	Settlement Statement 7.3.d (a) Determine rent prorations (b) Determine tax prorations (c) Determine payments due on service contracts	Buyer/Stew	Pending

(d)	Determine utility prorations		
(e)	Determine operating expense prorations		
(f)	Prepare schedule of rents, prepaid rents and security deposits		
(g)	Confirm w. writing correct amounts of above		
(h)	Brokerage commission		
(i)	Transaction Costs at Closing		
Buyer's Deliveries to Lender			
1.	Promissory Note		
2.	Mortgage		
3.	Security Agreement		
4.	Assignment of Rents to Lender		
5.	Guaranty & Spousal Joinder		
6.	U.C.C. Financing Statements		
7.	Certificate of Authority from ABC Holding Co.		
8.	Proposed Settlement Statement		
Post-Closing			
1.	Settlement of Utilities and other charges not capable of proration at Closing	Buyer/CDF Seller/Broker	Pending
2.	Deliver Tenant Letters	Broker	Pending
3.	Prepare Closing Binder	JEM	Pending

MISSOURI REQUIREMENTS FOR DOCUMENTS TO BE RECORDED

2001 House Bill 606 and Senate Bill 515, effective January 1, 2002, made substantial changes to requirements for documents to be recorded with any Missouri Recorder of Deeds. The bill, which repealed §§ 59.310 and 59.313 RSMo. and enacts new §§ 59.005, 59.310 and 59.313, allows Recorders to reject non-conforming documents and provides for a penalty fee of $25 to record non-conforming documents. The information below is based on the text of the statute and the practical interpretation thereof by the Recorders Association of Missouri (RAM) along with Missouri Bar Association, Missouri Bankers Association and Missouri Land Title Association.

Specific document-formatting requirements include:

- Except for plats and surveys, documents must be presented on 8½" x 11" white or light-colored paper of at least 20-pound weight without visible watermarks or other visible inclusions. Plats and surveys may be presented on alternative materials such as mylar or velum.
- Documents may consist of multiple pages, which may be stapled together for presentation but should not be permanently bound. Continuous form paper will not be acceptable for multiple-page documents.
- Documents may not have attachments affixed to any page with staples, tape or otherwise, except that firmly attached adhesive labels containing a bar code or return address may be used. (This requirement is intended to prohibit the old practice of taping or stapling legal descriptions on deeds.)
- The size of all print or typing must be at least 8-point type. Printing must be in black or dark ink. All text, seals, drawings, signatures and other content must be sufficiently legible to produce clear and legible reproductions. If a document contains type smaller than 8-point, or if it is insufficiently legible, it must be accompanied by an exact, legible retyped copy using at least 8-point type to be recorded contemporaneously as additional pages of the document.
- Documents must have printing on one side only.

- Documents must have a minimum top margin of 3" (reserved for the Recorder's certification and use) and minimum side and bottom margins of 3/4". Nonessential information such as form numbers, page numbers or "customer notations" may be placed in the margins. Documents may be recorded if minor portions of seals or incidental writings extend beyond the margins, but the Recorder will not be liable for not showing any seal or information that extends beyond the margins of the permanent archival record. (RAM's interpretation is that only the first page of a document must have a 3" top margin; subsequent pages may have a 3/4" top margin. If a previously recorded document is to be re-recorded, a new cover page with a 3" top margin and containing the required first-page information must be attached to the front of the document.)
- All signatures must be in black or dark ink of sufficient color and clarity to ensure that when a document is reproduced from the official record, it will be readable. Each signature must have the corresponding name typed, printed or stamped underneath the signature, and the typed, printed or stamped name shall not cover or otherwise materially interfere with any part of the document.
- The following information must appear on the first page of the document below the minimum 3" top margin:
    - ♦ The title of the document (The title need not be identified as such if it is clearly the title)
    - ♦ The date of the document (The document date need not be identified as such unless multiple dates appear on the page and the document date is therefore unclear)
    - ♦ All grantors' names (Grantors should be identified as such, and designations may be compound, such as "assignor/grantor" and multiple)
    - ♦ All grantees' names (Grantees should be identified as such, and designations may be compound, such as "assignee/grantee" and multiple)
    - ♦ Any addresses required by statute (All addresses should be identified as those of the grantors, grantees, trustee, etc.)

- ♦ The legal description of the property (It is sufficient if the legal description begins on the first page, so long as it continues uninterrupted to the second page)
- ♦ Reference book and pages to meet statutory requirements, if applicable
- ♦ If there is insufficient room on the first page of the document to include all of this information, the document must set out a page reference within the document where the information is located. The required page references may include references to attached exhibits, such as "Exhibit A," etc.

Pre-printed deed forms on letter-size paper may be recorded so long as a cover page meeting the above requirements is affixed to the front.

If a document is rejected for failure to meet any one or more of the foregoing requirements, the statute requires the Recorder to state the reasons for the rejection. (RAM is developing a standard rejection form for use throughout the state.)

Documents exempt from the foregoing format requirements include:

- Documents signed before January 1, 2002.
- Military separation papers
- Documents executed outside the United States
- Certified copies of documents, including birth and death certificates
- Any document where one of the original parties is deceased or otherwise incapacitated (Recorders may request documentation of death or incapacity but that such documentation need not be recorded)
- Judgments or other documents formatted to meet court requirements
- Although the new statute does not specifically so state, RAM has decided on the basis of other statutory authority that the new national UCC forms will be treated as exempt documents for recording purposes.

Recorder's fees established by the bill are as follows:

- To record non-plat and non-survey documents meeting the foregoing formatting

requirements: Note—other fees may apply to certain documents.

- ♦ $5 for the first page
- ♦ $3 for each additional page.

- To record non-plat and non-survey documents not meeting the foregoing formatting requirements, an additional fee of $25 per document.
- To copy or reproduce any recorded instrument except surveys and plats:
  - ♦ Not to exceed $2 for the first page
  - ♦ Not to exceed $1 for each page thereafter.

- To certify and seal a copy, except when recording a document, $1

- For plats and surveys:
  - ♦ To record a plat or survey of a subdivisions, outlets or condominiums, $25 per sheet (not to exceed 24" width and 18" height)
  - ♦ To record a survey of one or more tracts, $5 per sheet (not to exceed 24" width and 18" height), plus $5 per page for other material.
  - ♦ Plats for surveys larger than 18" x 24" shall be counted as an additional sheet for each additional 18" x 24".
- To copy a plat or survey, not to exceed $5 per 18" x 24" sheet plus not to exceed $1 per page for other material.
- For recording a document which releases or assigns more than one item, $5 for each item beyond one released or assigned in addition to any other applicable charges
- To provide a certified copy of a marriage license or application for marriage license, $2.
- For duplicate copies of records in a medium other than paper, the Recorder shall set a reasonable fee not to exceed the costs associated with document search and

duplication

- For all other use of equipment, personnel services and office facilities, the Recorder may set a reasonable fee

Appendix C-1
(Authorizing Resolution -LLC)

LIMITED LIABILITY COMPANY RESOLUTION CERTIFICATE OF AUTHORITY TO PURCHASE ASSETS AND BORROW FUNDS

I HEREBY CERTIFY, that I am a Member of XYZ, L.L.C. and that the following is a true and correct copy of a resolution adopted unanimously at a meeting of the Members thereof held in accordance with the Operating Agreement on the 24th day of October, 2008, and the same is now in full force.

RESOLVED, either of the Co-Managers of the Limited Liability Company, Lord Coke or Lord Blackstone, be and the same hereby are, authorized and directed to purchase additional real property consisting of approximately 20 acres in Nirvana Resort area, Any County, Missouri and to borrow funds therefor and to execute real estate notes, deeds of trust, security agreements, and any and all other and further instruments and documents and do any and all other things necessary or advisable to effectuate the purposes and intent of this resolution.

_____
Lord J. Blackstone, Member

Appendix C-2
(Authorizing Resolution- Corp)

BOARD OF DIRECTORS RESOLUTION
CERTIFICATE OF AUTHORITY OF BLACKACRE PROPERTIES, INC.
TO PURCHASE ASSETS

I HEREBY CERTIFY, that I am the President and the sole director of Blackacre Properties, Inc., and that the following is a true and correct copy of a resolution adopted by a Statement in Lieu of a Special meeting of the Directors thereof dated the 11th day of February, 2008, and the same is now in full force.

> RESOLVED, the President of the corporation, Sir William Blackstone, be and the same hereby is, authorized and directed to purchase real property commonly known as 1000 Main Street, Kansas City, Missouri, and execute real estate deeds, affidavits, settlement statements, and any and all other and further instruments and documents and do any and all other things necessary or advisable to effectuate the purposes and intent of this resolution.

_____
Sir William Blackstone
President and Sole Director

Appendix D
(Blanket Bill of Sale)

BLANKET CONVEYANCE. BILL OF SALE AND ASSIGNMENT

THE STATE OF §

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF §

That concurrently with the execution and delivery hereof,

("Assignor"), is conveying to , a Missouri limited liability company ("Assignee"), by Warranty Deed (the "Deed"), those certain tracts of land lying and being situated in the City of and being more particularly described on Exhibit A attached to the Deed and made a part thereof for all purposes (the "Property"). Unless otherwise defined herein, all initially capitalized terms shall have the respective meanings ascribed to such terms in that certain Purchase Agreement dated 2014, by and between Assignor and Assignee with respect to the conveyance of the Property.

It is the desire of Assignor hereby to assign, transfer and convey to Assignee, subject, however, to those certain matters more particularly described on Exhibit B attached to the Deed thereto and made a part thereof for all purposes (collectively, the "Permitted Encumbrances"), all Improvements, Personal Property, and Intangible Property, including, without limitation, those items more particularly described on Exhibit C attached hereto and made a part hereof for all purposes collectively, the "Assigned Properties"); provided, however, the Assigned Properties shall not be deemed to include, Assignee shall have no liability under, and Assignor shall remain solely liable and responsible for, a) any service or other contracts not listed on Exhibit C hereto; and (b) the contracts and other matters set forth on Exhibit D attached hereto and made a part hereof for all purposes (collectively, the "Non-Assigned Properties"),

NOW, THEREFORE, in consideration of the receipt of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged and confessed by Assignor, Assignor does hereby BARGAIN, ASSIGN, TRANSFER, SET OVER, CONVEY and DELIVER to Assignee, its successors, legal representatives and assigns, subject to the Permitted Encumbrances, all of the Assigned Properties.

TO HAVE AND TO HOLD the Assigned Properties, together with any and all rights and appurtenance thereto in anywise belonging to Assignor unto Assignee, its successors and

assigns FOREVER, and Assignor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the Assigned Properties, subject to the Permitted Encumbrances, unto Assignee, its successors and assigns, against every person lawfully claiming or to claim the same or any part thereof by, through or under Assignor, but not otherwise.

Assignor indemnifies and agrees to protect, defend and hold Assignee and its successors and assigns harmless from and against any and all liability (including, without limitation, any strict liability), loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees and costs of suit) incurred by, or otherwise asserted against, Assignee or such successors and assigns to the extent attributable to any one or all of (a) the Assigned Properties, but then only to the extent the act, event, omission, occurrence or matter giving rise to a claim for indemnity hereunder occurred prior to the date hereof, and/or (b) the Non-Assigned Properties, regardless of when the act, event, omission, occurrence or matter giving rise to a claim for indemnity hereunder occurred.

Assignee agrees to indemnify, protect, defend and hold Assignor harmless from and against any and all liability (including, without limitation, any strict liability), loss, cost, damage or expense including, without limitation, reasonable attorneys' fees and costs of suit) incurred by or otherwise asserted against Assignor with respect to the Assigned Properties to the extent same arise or are otherwise attributable to the period from and after the date hereof, but not otherwise.

IN WITNESS WHEREOF, Assignor and Assignee have executed this instrument as of (but not necessarily on) this day of , 2014.

Appendix E-1
(Tenant Estoppel Certificate)

TENANT ESTOPPEL CERTIFICATE

To:

Re: Lease of Premises at

, (the"Property")

The undersigned "Tenant" hereby represents and certifies to Purchaser as follows:

1. Tenant is the tenant under that certain lease (the "Lease") dated between Tenant and Landlord with respect to certain demised premises containing square feet and more particularly described in the Lease (the "Premises"),

2. A true, correct and complete copy of the Lease, together with all addenda, modifications and supplements thereto, if any, is annexed hereto as Exhibit A, which represents the entire agreement between the parties thereto with respect to the leasing of the Premises. The Lease is in full force and effect and has not been modified, supplemented, amended, terminated or surrendered in any way except as set forth and attached hereto as Exhibit A. There are no events or conditions presently existing which (a) constitute a monetary or other default of Landlord under the Lease, (b) entitle Tenant to offsets or defenses against the prompt, current payment of rent to Landlord or any assignee of Landlord in the Lease or (c) entitle Tenant to terminate the Lease for any reason

3. a. The term of the Lease commenced on 20 and shall expire on , , subject to any renewal or cancellation rights specified in the Lease. Tenant does not have any options, except in each case as may be specified in the Lease.

b. The current fixed [annual] [monthly] rent payment pursuant to the Lease is in the amount of $ and has been paid through and including , 2014. The estimated additional rent payable pursuant to the Lease on account of real estate taxes, insurance, common area maintenance charges and operating expenses has been paid through and including _ 2014. No rents are accrued and unpaid under the Lease.

c. Tenant has deposited with Landlord $ as a security deposit.

4. Tenant has accepted possession of the Premises, is in occupancy and paying full rental due under the Lease.

5. No rent has been paid more than thirty (30) days in advance.

6. The interest of Tenant in the Lease has not been assigned or encumbered, and no part of the Premises has been sublet.

7. There are no actions, whether voluntarily or otherwise, pending against Tenant under the Lease pursuant to the bankruptcy or insolvency laws of the United States or any state thereof.

8. Tenant acknowledges and consents to the fact that Landlord may assign and transfer or has assigned and transferred the landlord's interest under the Lease to Purchaser and Tenant agrees to attorn to Purchaser and to perform all of Tenant's obligations as the tenant under the Lease including, without limitation, the payment of rent), directly to Purchaser, its successors and assigns, as the new landlord under the Lease from and after the effective date of such assignment and transfer by Landlord to Purchaser.

Dated:

TENANT:

By: Name:
Title:

STATE OF

COUNTY OF

This instrument was acknowledged before me on this _____day of _____2014, by of a , acting on behalf of said entity.

My Commission Expires:

Notary Public, State of

Appendix E-2

(Substitute Tenant Estoppel Letter)

SUBSTITUTE TENANT ESTOPPEL LETTER

To:

RE: Lease Dated:
between:

Lessor, and

Lessee,

on premises located and addressed as:

This Certificate is being furnished to Purchaser in connection with the purchase of the Property by Purchaser from _____ ("Landlord").

Landlord hereby represents and warrants to Purchaser as follows:

1. _____ ("Tenant") is the tenant under that certain lease dated between Tenant and Landlord (together with all addenda, modifications and supplements thereto, if any, hereinafter collectively referred to as the "Lease"), with respect to certain demised premises containing _____ square feet and more particularly described in the Lease (the "Premises").

2. A true, correct and complete copy of the Lease, together with all addenda, modifications and supplements thereto, if any, is annexed hereto as Exhibit A, which represents the entire agreement between the parties thereto with respect to the leasing of

the Premises. The Lease is in full force and effect and has not been modified, supplemented, amended, terminated or surrendered in any way except as set forth and attached hereto as Exhibit A. To the best of Landlord's knowledge after due investigation (except as disclosed in writing), there are no events or conditions presently existing which (a) constitute a monetary or other default of Landlord under the Lease, (b) entitle Tenant to offsets against the prompt, current payment of rent to Landlord or any assignee of Landlord in the Lease or (c) entitle Tenant to terminate the Lease for any reason (except for any express termination rights set forth in _____Section of the Lease).

3. a. The term of the Lease commenced on _____, 20 , and shall expire on _____, , subject to any renewal or cancellation rights specified in the Lease. Tenant does not have any options, except as may be specified in the Lease.

b. The current fixed [annual] [monthly] rent payment pursuant to the Lease is in the amount of $_____ and has been paid through and including , 2008. The estimated additional rent payable pursuant to the Lease on account of real estate taxes, insurance, common area maintenance charges and operating expenses has been paid through and including _____ 2008. The additional rent, if applicable, payable pursuant to the Lease on account of a percentage of revenues has been paid through and including _____ 2008. No rents are accrued and unpaid under the Lease.

c. Tenant has deposited with Landlord $ _____ as a security deposit.

4. To the best of Landlord's actual knowledge (except as disclosed on Schedule 1 hereof), Tenant has accepted possession of the Premises and Landlord has complied with all construction obligations under the Lease.

5. No rent has been paid more than thirty (30) days in advance.

6. To the best of Landlord's actual knowledge, the interest of Tenant in the Lease has not been assigned or encumbered, and to the best of Landlord's actual knowledge no part of the Premises has been sublet.

7. To the best of Landlord's actual knowledge, there are no actions, whether voluntarily or otherwise, pending against Tenant pursuant to the bankruptcy or insolvency laws of the United States or any state thereof.

Dated: _____, 2014.

LANDLORD:

By:
Name:
Title:

Appendix F

(Form of SNDA)

Subordination, Non-disturbance, and Attornment Agreement

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT ("this Agreement") is made this ____ day of _____, 200_ (the "Effective Date"), by and between _____, a _____, whose address is _____ (together with its successors and assigns, the "Mortgagee"), as mortgagee, and _____, a _____, whose address is _____ (together with its successors and assigns, the "Tenant"), as tenant.

Introduction

A. _____, a _____, whose address is _____ (together with its successors and assigns, the "Landlord"), owns the land described in Exhibit A to this Agreement (such land, together with all improvements thereon, and all easements, rights, and ways appurtenant thereto or in anywise belonging and all of Landlord's right, title, and interest in all public ways adjoining the same is collectively called the "Landlord's Premises"). The improvements on such land are commonly known as _____.

B. Mortgagee has made a loan to Landlord in the original principal amount of _____ Dollars ($_____) (the "Loan").

C. To secure the Loan, Landlord has encumbered the Landlord's Premises by entering into that certain _____ dated _____, 200_, in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") [to be] recorded [on _____, 200_, at Liber ____, folio ___] in the land records of _____ County, _____ (the "Land Records").

D. Landlord, as lessor, and Tenant, as lessee, entered into the _____ dated as of _____ (together with all amendments, modifications, and supplements thereto, the "Lease"), for the demise of [a portion of] the Landlord's Premises to Tenant (the "Tenant's Premises"). The Tenant's Premises are commonly known as _____.

E. A memorandum of the Lease [is to be recorded in the Land Records prior to the recording of this Agreement.] [was recorded [on _____, 200_, at Liber ____, folio ___] in the Land Records.]

F. Mortgagee and Tenant desire to agree upon the relative priorities of their interests in the Landlord's Premises and their rights and obligations if certain events occur.

G. Landlord, as borrower of the Loan and lessor under the Lease, joins in executing and delivering this Agreement solely to give its consent and agreement to this Agreement.

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged by the parties, Mortgagee and Tenant agree as follows:

Agreement

1. Definitions.

For purposes of this Agreement, the following terms shall have the meanings set forth in this Section 1:

1.1 Construction-Related Obligation. A "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at the Landlord's Premises, including the Tenant's Premises. "Construction-Related Obligations" shall not include: (a) reconstruction or repair following fire, casualty, or condemnation; or (b) day-to-day maintenance and repairs.

1.2 Event of Foreclosure. An "Event of Foreclosure" means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan or of the Mortgage, as a result of which any party other than Landlord succeeds Landlord as owner of the Landlord's Premises; or (c) delivery by Landlord to Mortgagee (or Mortgagee's designee or nominee) of a deed or other conveyance of Landlord's interest in the Landlord's Premises in lieu of foreclosure or such exercise of Mortgagee's rights and remedies.

1.3 Former Landlord. A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any Event of Foreclosure.

1.4 Offset Right. An "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord as provided by this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or applicable law) from Landlord's breach or default under the Lease.

1.5 Rent. The "Rent" means any fixed rent, base rent, or additional rent under the Lease.

1.6 Successor Landlord. A "Successor Landlord" means any party that becomes owner of the Landlord's Premises as the result of an Event of Foreclosure. "Successor Landlord" shall not mean any successor or assignee of Landlord that becomes the owner of the Landlord's Premises other than as the result of an Event of Foreclosure.

1.7 Termination Right. A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

2. Subordination.

The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. Non-disturbance, Recognition, and Attornment.

3.1 No Exercise of Lease Remedies Against Tenant. So long as the Lease has not been terminated on account of Tenant's default that has continued beyond any applicable cure period under the Lease (an "Event of Default"), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 Non-disturbance and Attornment. If the Lease has not been terminated as a result of an Event of Default by Tenant, then, upon the occurrence of an Event of Foreclosure:

(a) the Successor Landlord shall not terminate or disturb Tenant's possession of the Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement;

(b) the Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease, except as otherwise provided by this Agreement;

(c) Tenant shall recognize and attorn to the Successor Landlord as Tenant's direct lessor under the Lease as modified by this Agreement; and

(d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms, except as otherwise provided by this Agreement, between the Successor Landlord and Tenant.

3.3 Further Documentation. The provisions of this Section 3 shall be effective and self-operative without any need for the Successor Landlord or Tenant to execute any further documents. Tenant and the Successor Landlord shall, however, confirm the provisions of this Section 3 in writing upon request by either of them.

4. Protection of Successor Landlord.

The Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Successor Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of an Event of Foreclosure, including any claim for damages of any kind whatsoever as the result of any breach by a Former Landlord that occurred before the date of such Event of Foreclosure. The foregoing shall not limit either (a) Tenant's right to exercise against a Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of the Event of Foreclosure; or (b) the Successor Landlord's obligation to correct any conditions that existed as of the date of the Event of Foreclosure and which violate the Successor Landlord's obligations as landlord under the Lease.

4.2 Prepayments. Any payment of Rent that Tenant may have made to a Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period before the date of an Event of Foreclosure.

4.3 Payment; Security Deposit. Any obligation (a) to pay Tenant any sum that any Former Landlord owed to Tenant; or (b) with respect to any security deposited with a Former Landlord, unless such security was actually delivered to the Successor Landlord. This paragraph is not intended to apply to a Successor Landlord's obligation to make any payment that constitutes a "Construction-Related Obligation."

4.4 Modification, Amendment or Waiver. Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Mortgagee's written consent.

4.5 Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. Exculpation of Successor Landlord.

Upon the occurrence of any Event of Foreclosure, the Lease shall be deemed to have been automatically amended to provide that the Successor Landlord's obligations and liability under the Lease shall never extend beyond the Successor Landlord's interest (or the interest of its successors or assigns), if any, in the Landlord's Premises from time to time, including insurance and condemnation proceeds, the Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of the Landlord's Premises by the Successor Landlord (collectively, the "Successor Landlord's Interest"). Tenant shall look exclusively to the Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of the Successor Landlord under the Lease as modified by this Agreement. If Tenant obtains any money judgment against the Successor Landlord with respect to the Lease or the relationship between the Successor Landlord and Tenant, then Tenant shall look solely to the Successor Landlord's Interest (or that of its successors or assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of the Successor Landlord.

6. Mortgagee's Right to Cure.

6.1 Notice to Mortgagee. Before exercising any Termination Right or Offset Right, Tenant shall provide Mortgagee with notice of the breach or default by Landlord or the Successor Landlord under the Lease giving rise to such Termination Right or Offset Right (the "Mortgagee's Default Notice") and, thereafter, the opportunity to cure such breach or default as provided by this Section 6.

6.2 Mortgagee's Cure Period. After Mortgagee receives a Mortgagee's Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord or the Successor Landlord under the Lease in which to cure the breach or default by Landlord or the Successor Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord or the Successor Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Landlord or the Successor Landlord under the Lease, the cure of which requires possession and control of the Premises, provided only that Mortgagee undertakes, by written notice to Tenant within thirty (30) days after receipt of the Mortgagee's Default Notice, to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this Section 6.3, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require either to (a) obtain possession and control of the Premises and thereafter cure the breach or default with reasonable diligence and continuity; or to (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the breach or default.

7. Miscellaneous.

7.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice given as provided by this Section 7.1. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

7.2 Due Authorization.

(a) Mortgagee has full authority to enter into this Agreement, and has duly authorized its execution and delivery of this Agreement by all actions required by Mortgagee's organizational documents.

(b) Tenant has full authority to enter into this Agreement, and has duly authorized its execution and delivery of this Agreement by all actions required by Tenant's organizational documents.

7.3 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

7.4 Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

7.5 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as among the parties and any Successor Landlord, including upon any Event of Foreclosure. This Agreement supersedes, and upon execution and delivery shall constitute full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of, the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

7.6 Mortgagee's Rights and Obligations. Except as expressly provided in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease.

7.7 Amendments. This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the party to be bound.

7.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.9 Governing Law. This Agreement shall be governed by the laws of the [State] [Commonwealth] of _____, excluding any _____ choice of law principles.

IN WITNESS WHEREOF, the parties have duly executed this Agreement under seal on the Effective Date.

_____, a

WITNESS: _____, Mortgagee

_____ By: _____ (SEAL)

Its: _____

_____, a

WITNESS: _____, Tenant

_____ By: _____ (SEAL)

Its: _____

Consent of Landlord

Landlord, as landlord under the Lease and borrower under the Mortgage, consents and agrees to this Agreement. Landlord is not a party to this Agreement, and joins in executing and delivering this Agreement solely to give its consent and agreement hereto.

_____, a

WITNESS: _____, Landlord

_____ By: _____ (SEAL)

Its: _____

EXHIBIT A
Description of Landlord's Premises

Appendix G
(Tenant Notification Letter)

TENANT NOTIFICATION LETTER

_____ [Date]

_____
_____
_____
[Name and Address of Tenant]

Re: Sale of _____, Kansas City, Missouri

Dear Tenant:

Please be advised that:

1. ("Purchaser") has purchased the captioned property (the "Property") from Real Estate, Inc., a Missouri corporation ("Seller").
2. In connection with such purchase, Seller has transferred your security deposit in the amount of $ _____ (the "Security Deposit") to Purchaser. Purchaser specifically acknowledges the receipt of and sole responsibility for the return of the Security Deposit.
3. All rental and other payments that become due subsequent to the date hereof should be payable to Purchaser and should be delivered to _____, _____, Kansas City, Missouri (816-753-2800) as the new owner of the Property unless you are otherwise notified by Purchaser in writing.
4. A copy of the Deed is attached.

SELLER: PURCHASER:

REAL ESTATE, INC.,

a Missouri corporation

By: _____ By: _____

Lord Coke, President

Sir William Blackstone, President

APPENDIX H
(Post-closing Agreement)

POST-CLOSING AGREEMENT

THIS POST CLOSINGAGREEMENT ("this Agreement") is made this _ day of , 200, by and among a (the `Buyer"), as buyer, a (the "Seller"), as seller, and , a (the "Escrow Agent"), as escrow agent.

Introduction

Buyer, as buyer, and Seller, as seller, have entered into the Contract of Sale dated , 2014 (the "Contract of Sale"), which provides for the purchase and sale of the real property described in Exhibit - to the Contract of Sale (the "Property").

The Contract of Sale provides that Buyer's obligation to consummate the Closing is conditioned upon the satisfaction of certain conditions, including but not limited to the performance by Seller of the matters described in Exhibit A to this Agreement (the "Seller's Post-Closing Obligations"). As of this date, such conditions have not been satisfied, but in lieu of such satisfaction the parties have agreed to consummate the Closing and to enter into this Agreement.

The Escrow Agent has agreed to serve as the escrow agent for the Escrowed Funds (defined in Section 4(b)) in consideration of the fee payable as provided by Section 4(e) of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Defined Terms.

Capitalized terms used but not defined in this Agreement are used as defined in the Contract of Sale.

2. Seller's Post-Closing Obligations.

(a) [Seller] [Buyer] shall perform all of Seller's Post-Closing Obligations (i) on or before _, 200_ (the "Post-Closing Completion Date"); (ii) in compliance with all applicable governmental laws, regulations, codes, and requirements; and (iii) to the extent that Seller's Post-Closing Obligations pertain to improvements, repairs, or maintenance to the Property or any improvements thereon, in a workmanlike manner, using practices and materials customary in the trade. [Before Seller commences performing any of Seller's Post-Closing Obligations at the Property, Seller shall provide to Buyer, in writing, Seller's choice of contractors and consultants to perform such Seller's Post-Closing Obligations, together with any plans and specifications therefor, and such contractors, consultants, plans, and specifications shall be subject to Buyer's approval, such approval not to be unreasonably withheld or delayed.] On or before the Post-Closing Completion Date, [Seller] [Buyer] shall promptly give [Buyer] [Seller] true and complete copies of all bills, statements, or invoices for the Post-Closing Costs. [Seller shall not be obligated to expend more than the amount of the Escrowed Funds in performing Seller's Post-Closing Obligations, and Buyer shall not be obligated to reimburse Seller for expenditures of any amounts in excess of the Escrowed Funds.]

(b) Upon completion of Seller's Post-Closing Obligations as provided by Section 2(a), Buyer and Seller shall promptly deliver to the Escrow Agent a Notice (as defined in Section 5), executed by both Buyer and Seller, instructing the Escrow Agent [to release the Escrowed Funds to Seller.] [(i) to disburse to Buyer an amount of the Escrowed Funds not to exceed the actual costs and expenses, including attorneys' and consultants' fees and disbursements, incurred by or on behalf of Buyer to perform Seller's Post-Closing Obligations (collectively, the "Post-Closing Costs"); and (ii) to release any balance of the Escrowed Funds to Seller.] Neither Buyer nor Seller shall be obligated to execute or deliver the Notice to the Escrow Agent as provided by this Section 2(b) if such party has not received true and complete copies of all bills, statements, or invoices for the Post-Closing Costs in the aggregate amount thereof.

3. Seller's Right of Entry.

(a) From the date of this Agreement through the Post-Closing Completion Date, Seller and its contractors, employees, and agents shall have the right, subject to the rights of tenants under Leases, to enter upon the Property, solely for the purpose of performing Seller's Post-Closing Obligations, with reasonable advance notice to Buyer and, if required by Buyer, accompanied by a representative of Buyer. Seller, in the exercise of such right of entry, shall use all reasonable efforts not to damage the Property or to interfere unreasonably with Buyer's or Buyer's tenants' operation thereof.

(b) Seller shall indemnify and hold Buyer harmless against and from all costs, claims, damages, or liability of any kind resulting from all acts or omissions of Seller or its contractors, employees, or agents arising out of or relating to the exercise of the right of entry set forth in Section 3(a). The provisions of this Section 3(b) shall survive the expiration or termination of this Agreement.]

4. Escrowed Funds.

(a) Seller and Buyer hereby appoint a , as the Escrow Agent under this Agreement, and the Escrow Agent hereby accepts such appointment on the terms and conditions of this Agreement.

(b) The Escrow Agent hereby acknowledges receipt of proceeds of the sale of the Property in the amount of Dollars ($) ([together with all interest and other income accruing thereon,] the "Escrowed Funds"), which Escrowed Funds are to be held and disbursed as provided by Section 4(c). [All interest or income accruing on the principal amount of the Escrowed Funds shall be a part of the Escrowed Funds for all purposes of this Agreement.]

(c) The Escrow Agent shall promptly deposit and maintain the Escrowed Funds in [an interest-bearing] [a non-interest-bearing], federally insured account, to which [officers of the Escrow Agent are the sole signatories] [the Escrow Agent is the sole signatory], at a financial institution located in the [State] [Commonwealth] of (the "Escrow Account"). The Escrow Agent shall not release or disburse any portion of the Escrowed Funds, or any interest accrued thereon, to any person except as provided by (i) one or more Notices executed jointly on behalf of Buyer and Seller; or (ii) the order of a court exercising jurisdiction over the parties or the Escrowed Funds. The Escrow Agent shall not be obligated to inquire into the authenticity of, or authority for, signatures to any such Notice. If the Escrow Agent has not received one or more of such Notices providing for disposition of all portions of the Escrowed Funds on or before the Post-Closing Completion Date, then the Escrow Agent is hereby authorized to commence a suit in the nature of an interpleader in any court of competent jurisdiction and to tender the undisbursed amount of the Escrowed Funds into the custody of such court. Thereafter, the Escrow Agent shall have no further obligations or liabilities under this Agreement or otherwise in connection with the Escrowed Funds.

(d) Buyer and Seller, jointly and severally, shall indemnify and hold the Escrow Agent harmless from and against all claims, costs, expenses, damages, and losses in connection with the performance by the Escrow Agent of its obligations under this Agreement, except any such claims, costs, expenses, damages, or losses caused by the gross negligence or willful default of the Escrow Agent. The provisions of this Section 4(d) shall survive the expiration or termination of this Agreement.

(e) As consideration for performance by the Escrow Agent of its obligations under this Agreement, the Escrow Agent shall be entitled to receive an escrow fee in the amount of Dollars ($ (the "Escrow Fee") from Buyer and Seller. Buyer and Seller shall each pay to the Escrow Agent one-half (1/2) of the Escrow Fee promptly upon the first release of the Escrowed Funds to Buyer or Seller by the Escrow Agent as provided by Section 4(c); provided, however, that if the Escrow Agent commences a proceeding in the nature of an interpleader as provided by Section 4(c) before the Escrow Agent has been paid, the Escrow Agent is hereby authorized to deduct the Escrow Fee from the Escrowed Funds before paying the Escrowed Funds into the custody of the court.

(f) The Escrow Agent may resign and be discharged from its duties under this

Agreement at any time by giving Notice of such resignation to Seller and Buyer, specifying a date at least (_) after the date of the Notice when such resignation shall take effect. Upon receipt of such Notice, Buyer and Seller shall appoint a successor Escrow Agent on or before the effective date of the resignation of the predecessor Escrow Agent. Such successor Escrow Agent shall become the Escrow Agent on the terms and conditions of this Agreement upon the resignation date specified in the Notice from the resigning Escrow Agent; provided, however, that the resigning Escrow Agent shall continue to serve until its successor accepts the appointment as Escrow Agent by giving Notice thereof to Seller, Buyer, and the resigning Escrow Agent

(g) Seller and Buyer shall jointly have the right at any time and without cause to discharge the Escrow Agent and appoint a substitute Escrow Agent by giving Notice thereof to the Escrow Agent then acting, specifying a date when such discharge and appointment shall take effect. Such substitute Escrow Agent shall become the Escrow Agent on the terms and conditions of this Agreement upon the appointment date specified in such Notice; provided, however, that the discharged Escrow Agent shall continue to serve until its substitute accepts the appointment as Escrow Agent by giving Notice thereof to Seller, Buyer, and the discharged Escrow Agent.

5. Notices.

All notices, demands, elections, deliveries, instructions to the Escrow Agent, and other communications among the parties required or desired to be given in connection with this Agreement (each, a "Notice"), to be effective under this Agreement, shall be in writing and shall be deemed to be given and received (i) when delivered personally; (ii) one business day after deposit with a national overnight courier service (e.g., Federal Express); or (iii) three (3) business days after deposit with the United States Postal Service as certified mail, return receipt requested; in any event with all charges or postage prepaid and addressed as follows:

If to Buyer,
with a copy to

If to Seller,
with a copy to

And if to the Escrow Agent,

Any party may from time to time designate another address for the receipt of future Notices by a Notice given as provided in this Section 5 to the other parties at the addresses set forth in, or as last provided by such other parties in accordance with, this Section 5.

6. Termination of Agreement.

Except as otherwise expressly provided, this Agreement shall terminate upon (a) the full performance of all of Seller's Post-Closing Obligations; and (b) the disposition of all of

the Escrowed Funds as provided by Section 4(c).

7. Miscellaneous.

(a) This Agreement, together with the Exhibits attached hereto, is the entire agreement among the parties with respect to the matters set forth herein, and all prior statements, discussions, negotiations, and agreements, oral or written, are superseded by this Agreement and merged herein. This Agreement shall survive the Closing.

(b) This Agreement is binding upon and shall inure to the benefit of the patties and their respective [successors and assigns] (heirs and personal representatives].

(c) If either Seller or Buyer prevails against the other in any judicial proceeding in connection with the enforcement of this Agreement or the disposition of the Escrowed Funds, the prevailing party shall be entitled to recover its actual attorneys' fees and court costs in such proceeding from the
other party.

(d) This Agreement may be executed in two or more counterparts and all counterparts shall collectively constitute a single agreement. This Agreement shall become effective only upon execution and delivery by all parties.

(e) Time shall be of the essence of this Agreement.

(f) This Agreement shall be governed by the laws of the (State] of , excluding any choice of law principles.

IN WITNESS WHEREOF, the parties have duly executed this Post-Closing Agreement under seal on the date first written above.
a

WITNESS: Buyer

By: (SEAL) Its:
a

WITNESS: , Seller

By: (SEAL) Its:

a

WITNESS: , Escrow Agent
By: (SEAL) Its:

EXHIBIT A
Seller's Post-Closing Obligations

[Describe in detail, attaching any applicable plans and specifications]

APPENDIX I-1
(Buyer's Attorney Letter of Escrow Instruction)

THE MURPHY LAW FIRM
Attorneys at Law
4700 BELLEVIEW AVE., SUITE 210
KANSAS CITY, MO. 64112

PHONE 816-753-2800
FAX 816-753-2886
email jmurphy@kcnet.com

January 12, 2009

Ms. Janice Smith
Major Title Insurance Company
222 Main Street
Suite 5250
Chicago, Illinois 65402

Re: Your Commitment No. 999999999 (Revised 2) (the "Commitment")
Purchase of Big Box Store in Anytown for $3,300,000.00 from Holding Corporation with a $2,250,000 Loan by Future Bailout, N.A. to Sir Edward Coke and Coke Real Estate Properties, L.L.C. (collectively "Borrowers")

Dear Ms. Smith:

As you know, I represent the Borrower (Coke Real Estate Properties, LLC, a Kansas limited liability company) in the above transaction in which your firm has agreed to act as escrow agent. Kindly provide an insured closing letter from Major Title Insurance Company in the event that the closing is handled by an agent. On behalf of the Borrower, Coke Real Estate Properties, L.L.C., I would hereby advise and instruct you as follows:

I. Escrow Deposits:

A. We shall deliver herewith the following documents for delivery to Seller:

B. We shall deliver the following documents either to you or directly to the

Lender before closing:

1. One original Promissory Note in the amount of $2,250,000.00 executed by Buyers;
2. Original counterparts of a First Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Buyers;
3. One Original each of a Guaranty executed by Sir Edward Coke;
4. Original counterparts of U.C.C.-1 Financing Statements executed by Buyer;
5. Certificate of Existence from Coke Real Estate Properties, L.L.C.;

C. On or about the closing date, the Lender will wire transfer to your escrow account certain proceeds of the Loan in an amount to be determined.

D. Sellers will deliver (or execute at your offices) the following documents ("Sellers' Delivery Documents"):

1. Kansas Warranty Deeds to the 50 percent respective interests of the buyers
2. FIRPTAs
3. Mechanics Lien etc. Affidavit
4. Seller's Authority to consummate transaction
5. Certificate of Authority from Big Box Corporation;
6. Certificate of Good Standing from Big Box Corporation;
7. Consent or Resolution of Board of Directors of Big Box Corporation

II. Creation of Escrow:

The Documents and the Disbursement (collectively, the "Escrow Deposit") have been delivered to you in escrow subject to the terms and conditions of this letter. You shall hold the Escrow Deposit subject to the terms and conditions of this letter until Closing Conditions (as hereinafter defined) are satisfied, or until you are required by this letter to return the Escrow Deposit as hereinafter provided.

III. Closing Conditions. The "Closing Conditions" are defined as follows:

A. You must be prepared to immediately issue and will issue, to Buyer a policy of title insurance the ("Owner's Title Policy") complying in all respects with Exhibit A attached hereto which incorporated herein by reference; and a Mortgagee's Title Policy in the form requested by Lender's counsel; and

B. You shall have received oral or telephonic instructions from Jerome E. Murphy directing you to proceed with the closing of this transaction. DO

NOT PROCEED WITHOUT THIS, AS THERE MAY REMAIN CONDITIONS TO BE SATISFIED THAT ARE NOT COVERED IN THIS LETTER; and

C. You shall have received the Sellers' Delivery Documents fully executed and, where applicable, in recordable form;

D. You shall have received sufficient funds in accordance with Buyer's Settlement Statement to permit you to make all the disbursements of funds contemplated therein.

IV. Closing Actions.

A. Upon satisfaction of the Closing Conditions, you are authorized and directed to record the Deed, the First Mortgage, and the financing statements as requested by the Lender's counsel; when recording is completed, please call Jerome E. Murphy at (816) 753-2800 to advise of the recording information.

B. You are authorized to disburse funds in accordance with the Settlement Statement approved by the Buyer, Seller and Lender.

V. Effect of Disbursing Funds and Recording.

Upon recording any Documents or disbursing any of the Disbursement, you are obligated to issue the Owner's Title Policy and the Mortgagee's Title Policy and shall do so within 10 days after Closing.

The costs and the payment of taxes, assessments and the like are not the responsibility of this law firm or of the Lender, and by accepting these instructions, you agree to look only to the funds provided by the Buyer or the Seller and not this law firm or the Lender.

VI. Facsimile Instructions Permitted.

Approvals and further instructions hereunder, which may supplement or countermand those now contained herein, may be given by facsimile transmission, and you shall be entitled to rely on matters so transmitted.

Please acknowledge receipt of the attached documents and your agreement to follow the foregoing instructions and to issue the policy and herein described, by signing the attached copy hereof on the line where indicated. Please send or fax us a pro-forma settlement statement for our review and comment.

Very truly yours,

Jerome E. Murphy

Consented & Agreed:

_____
Major Title Insurance Company

Description of Owner's Title Policy

The Owner's Title Policy to be issue to Coke Real Estate Properties, L.L.C ("Owner") shall be an ALTA Owner's Policy (ALTA 1970 Rev. 10/17/70 and 10/17/84), insuring the Owner in the amount of $3,300,000 and issued by Major Title Insurance Company in accordance with its commitment No. 99999999999999 Revised 2 bearing an effective date of October 10, 2008, but modified in the following respects:

1. The proposed insured on Schedule A must be Coke Real Estate Properties, L.L.C. and Sir Edward Coke, Tenants in Common.

2. The following special endorsements must be issued with the Policy:

A. An endorsement insuring that the property described in the Deed is the same as the property shown on the plat survey prepared by Davy Jones dated 11-14-08, as Project No. 7143 which is certified to the Buyer, the Lender and to your company. ("Survey - Same As" Endorsement)

B. ALTA 9;

C. ALTA 3.1 zoning endorsement;

D. An endorsement insuring that the property insured has the right to direct access onto Sunset Drive, S.W.;

E. "Fairway" endorsement to insure no lapse of policy coverage of the members of the LLC in the event the LLC terminates.

APPENDIX I-2
(Seller Attorney Letter of Escrow Instruction- Section 1031)

THE MURPHY LAW FIRM
Attorneys at Law
4700 BELLEVIEW AVE., SUITE 210
KANSAS CITY, MO. 64112

PHONE 816-753-2800
FAX 816-753-2886
email jmurphy@kcnet.com

February 4, 2010

Sally Smith
Major Title Insurance Company
106 W 11th Street
Suite 1800
Kansas City, MO 64105

RE: Your Commitment File No. 9999999998, dated November 17, 2008, ("Commitment") in connection with the Sale of 123 Main St., by A**ssured Quality Exchange Company, LLC**, acting as Qualified Intermediary ("QI") for **Blackstone Properties, Inc.,** a Missouri corporation to **The Whiteacre Corporation.**

Dear Sally:

This letter shall constitute closing instructions from the undersigned attorney for Blackstone Properties, Inc. (the "Sellers") in connection with the sale of certain real property at 123 Main, Kansas City, Missouri to The Whiteacre Corporation (the "Buyer").

1. Document Delivery. In connection therewith, I or my client will deliver to you in escrow the following instruments and request that you hold the same subject to the terms of this letter:

   A. Missouri Special Warranty Deed.

   B. ALTA Affidavit.

   C. Settlement Statements.

D. FIRPTA Affidavits.

E. An executed Lease Agreement

F. Authorizing Resolution.

G. Assignment of Development Agreement.

All of the foregoing are hereinafter collectively referred to as the "Seller's Deliveries."

2. In addition, Assured Quality Exchange Company, LLC is delivering to you in escrow, copies of the following documents to effect a Section 1031 exchange:

A. Copies of an Assignment and Acceptance of Purchase Agreement from the Sellers to Assured Quality Exchange Company, LLC to facilitate an exchange.

B. An Exchange Agreement with Direct Deeding Instructions.

All of the foregoing are hereinafter collectively referred to as the "Seller's 1031 Documents."

3. Escrow Conditions. Prior to the execution and delivery of the Seller's Deliveries, please obtain signatures on all of the Seller's 1031 Documents and deliver to Buyers the copy of the Assignment and please get Buyers' signature before proceeding.

4. You are authorized to release and/or record, as appropriate, the Seller's Deliveries only upon your satisfaction of each of the following express conditions precedent:

A. You have been able to comply with the escrow instructions of the Qualified Intermediary, Assured Quality Exchange Company, LLC.

B. Buyer has delivered to you sufficient good funds in accordance with the Seller's Statement to permit you to make all disbursements contemplated therein without contribution from the Seller.

C. Your delivery to the undersigned of a copy of this letter executed by a duly authorized representative of Major Title Insurance Company.

D. Your receipt of sufficient documentation to insure Buyer's purchase of the Property in accordance with the Buyer's closing instruction letter as well as to release the liens, security interest (if any) and other matters filed against the Property or any interest therein.

E. You must be in a position to comply with the Buyer's instructions and you must also be in possession of the following documents signed by the Buyer with authority to deliver same to Seller on completion of this closing:

(i) Assignment and Acceptance of Purchase Agreement from the Sellers to Assured Quality Exchange Company, LLC to facilitate an exchange.

(ii) Executed Settlement Statement

5. Signing and Recording Order. Upon your satisfaction of the conditions set forth in paragraph 3 above, you are authorized to proceed with the recording of the Deed and the appropriate disbursement of any of the other Seller's Deliveries and immediately thereafter make disbursements in accordance with Seller's Settlement Statement.

6. Post Closing Deliveries. Once the conditions set forth herein have been satisfied, you are instructed to deliver fully executed counterparts (or photocopies) of the following items to the undersigned:

A. Disbursement of sale proceeds to the Qualified Intermediary Only in the name of Seller which are due Seller pursuant to the Seller's Settlement Statement.

B. One (1) photocopy or pdf of the recorded deed (or you simply notify me of the book and page reference); when recording is completed, please call Jerome E. Murphy at (816) 753-2800 to advise of the recording information.

C. One (1) copy of the executed Seller's Closing Instructions.

7. Costs of Escrow and Closing.

A. The Seller will pay the following:

(i) The premium for the Owner's Title Policy, and

(ii) one-half of your closing fee.

B. The Buyer will pay the following:

(i) the costs of recording the deed, the mortgage, any security agreement, or assignment of leases and rents, or UCC-1's and any other documents requested by any Lender to secure the Promissory Note,

(ii) the premium for the Mortgagee's Title Policy, if any,

(iii) the premiums, if any, for special endorsements requested either by the Lender or by the Buyer,

(iv) one-half of your closing fee.

The costs described above and the payment of taxes, assessments and the like are not the responsibility of this law firm, and by accepting these instructions, you agree to look only to the funds provided by the Buyer or the Seller and not this law firm.

8. Facsimile Instructions Permitted. Approvals and further instructions hereunder, which may supplement or countermand those now contained herein, may be given by facsimile transmission, and you shall be entitled to rely on matters so transmitted.

9. Miscellaneous. If you have not complied with the terms of this letter on or before 5:00 P.M. CST on Tuesday, February 5, 2008, you shall take no action without further written instructions from the undersigned or Lord William Blackstone.

Please acknowledge receipt of the attached documents and your agreement to follow the foregoing instructions and to issue the policy and herein described, by signing the attached copy hereof on the line where indicated.

Very truly yours,

Jerome E. Murphy

Encl.
cc: client

Consented and Agreed:

_____

Sally Smith

APPENDIX J
(Table of Contents for a Closing Binder)

THE MURPHY LAW FIRM
Attorneys at Law
4700 BELLEVIEW AVE., SUITE 210
KANSAS CITY, MO. 64112

PHONE 816-753-2800
FAX 816-753-2886
email jmurphy@kcnet.com

January 12, 2009

TABLE OF CONTENTS

RE: BLACKACRE

Contract:

1. Real Estate Sale Agreement between Blackacre Plaza, L.L.C. and REAL ESTATE CO

2. First Amendment to Real Estate Sale Agreement between Blackacre Plaza, L.L.C. and REAL ESTATE CO

3. Second Amendment Real Estate Sale Agreement between Blackacre Plaza, L.L.C. and REAL ESTATE CO

4. Assignment of Real Estate Contract from REAL ESTATE CO to Qualified Intermediary

5. Acknowledgment of Seller's Assignment to Qualified Intermediary

Due Diligence Documents:

6. Title Commitment & Exception Documents

7. Survey

8. Phase I Environmental Survey

9. Planning and Zoning Materials

    a. Zoning ordinance
    b. Preliminary plan approval
    c. Minutes of the planning commission

10. Airport correspondence and materials

    a. Memorandum from John Doe dated April 19, 2005
    b. Proposed Drive relocation agreement with county airport
    c. Copy of Federal Form 2120 re the proposed drainage basin
    d. Letter from Jim Smith, Director of Airport to City Planner, dated September 23, 2005.
    e. Copies of written findings by the FAA that the proposed buildings are allowable and need not be marked with red beacons

11. Proposed Storm Water Detention Basin Easement Agreement

12. Proposed Common Area Maintenance Agreement

From Sellers:

13. Kansas Warranty Deed - from Blackacre Plaza, L.L.C. to REAL ESTATE CO.

14. Buyer's Evidence of Authority to consummate transaction
    Certificate of Good Standing
    Articles & Bylaws
    Authorizing Resolution

15. Partial Disclaimer of Power Line Easement by K.C.P.L.

To the Lender:

16. Promissory Note

17. Mortgage

18. Assignment of Leases

19. Guaranty and Spousal Joinders

20. Financing Statements

21. Escrow Agreement[†]

From the Casualty Insurance Company:

22. Insurance Binder

From the Title Insurance Company:

23. Settlement Statements

24. Tax Proration Acknowledgement

25. Title Insurance Policy and Commitment[‡]

Attorney's letters of Escrow Instructions

[†] This document will be prepared post-closing.

[‡] What appears in this closing binder is merely a commitment for title insurance; I have requested that the original be sent.