



Contract/Document Review Cover Sheet

Contract with: The Windamere, LLC	Contract for: Sale of Bank One Building
Department: City Manager	Division:
Staff Contact: Doug Adkins	<input type="checkbox"/> Urgent – Deadline:

DEPARTMENT HEAD APPROVAL

I recommend approval of this contract or document. It has received all necessary reviews by my department.

 Department Head

8/25/14

 Date

*Signature is required for all contracts and documents being submitted for final review.

INITIAL REVIEW
(contract or document is not complete, review and mark-up is needed)

Date received by Law Dept

1st review _____

2nd review _____

Law Dept Action

Approved – Date _____

Revisions Needed – Date _____

NOTES

Asset Purchase Agreement with Chris Walden's company to purchase the Bank One building from the City. The Only change from previously approved versions is that we have removed the requirement in paragraph 3.2 that Mr. Walden assist the AAUW in finding new lease space. The City will assist the AAUW if needed.

FINAL REVIEW
(contract or document is complete and in final form w/ all attachments)

1. Authorization

City Ordinance – O 2014-38

Motion Agenda – Date _____

Consent Agenda – Date _____

No Council Authorization Needed (briefly explain why):

2. Expenditure of money by the City

Yes No

Account # _____

Amount \$ _____

Fiscal Officer Certificate attached

3. Law Dept Action

Date received 8/25/14

Approved – Date 8/25/14

Not Approved/Revisions Needed –

Date _____

Doug Adkins

From: Mica Glaser <micaglaser@gmail.com>
Sent: Monday, August 25, 2014 8:51 AM
To: Doug Adkins
Subject: Re: Windamere Purchase agreement

Doug,
We have every intention of helping the UAAW find a new space. Our lawyer was just concerned that the word "assist" was too broad and that it could be construed as a financial commitment in helping them find a new place. I think Chris may already know someone who would move them in. Last week Rachel contacted me about them and their status and I let her know that they would have to move but that we are very interested in hosting a fundraiser for them that will raise more money in one night than their booksale with a fraction of the work.

I look forward to hearing back from you when the agreement is ready.

Cheers,
Mica

On Monday, August 25, 2014, Doug Adkins <douga@cityofmiddletown.org> wrote:

Mica,

I'll send this on to Law for review. While I don't have a problem striking the language assisting the University Women from help in moving, it may be an issue we both have to deal with informally. They are nice folks doing good work and I'd want to make sure they find a new home.

When I get this back from Law ready to execute, I'll be in touch.

Doug

Doug Adkins | City Manager
City of Middletown — City Manager's Office
1 Donham Plaza
Middletown, Ohio 45042-1932
(513) 425-7836 Office
(513) 425-7921 Fax



ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is entered into this ____ day of _____, 2014, by and between **The Windamere LLC** (hereinafter "Purchaser"), [Address] and the **City of Middletown**, One Donham Plaza, Middletown, Ohio 45042 (hereinafter "City" or "Seller").

Recitals:

WHEREAS, the Seller is the owner of certain real property known as the Bank One Building, (hereinafter "Bank One" or "Property") located at 2 South Main Street, Middletown, Ohio; and

WHEREAS, the Seller desires to transfer said real estate and other property to the Purchaser and Purchaser desires to purchase said real estate and other property from the Seller;

Agreement:

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1 – SALE OF REAL ESTATE AND PERSONAL PROPERTY

1.1 Seller agrees to sell and transfer and Purchaser agrees to purchase and receive the following real estate, fixtures, personal property and intangibles owned by Seller:

- A. The real property, including all improvements, located at 2 South Main Street, Middletown, Butler County, Ohio, more specifically described in Exhibit "A", attached hereto.

SECTION 2 – PURCHASE PRICE

2.1 Purchaser agrees to pay Seller the sum of One Hundred Forty Thousand Dollars (\$140,000.00) at closing for the Assets as set forth herein.

SECTION 3 – CONTINGENCIES

3.1 Environmental Inspection: Within sixty (60) days after Agreement acceptance hereof, Seller agrees to permit the Purchaser, the Purchaser's lender and the qualified, professional environmental consultant of either of them to enter the Property to conduct, at the expense of the Purchaser, an environmental site assessment. Purchaser agrees to indemnify and hold Seller harmless from any injury or damage caused by such inspection.

A. Property Inspection: Purchaser's obligations to purchase the Property shall be further contingent upon Purchaser, within sixty (60) days after the acceptance of this Agreement, determining that the Property can be feasibly developed and economically operated in accordance with Purchaser's sole satisfaction, that the soil and subsurface conditions existing on the Property are adequate for Purchaser's anticipated uses and that no wetlands, engineering, environmental, toxic waste, or hazardous substance problems exist with respect to the Property.

B. Any costs associated with Purchaser's inspection of the Property shall be borne by Purchaser. If Purchaser discovers a condition which is unsatisfactory to the Purchaser, Purchaser shall advise Seller of such condition within said sixty (60) day period. Seller may within five (5) days of such notice either resolve the condition to the satisfaction of the Purchaser, or advise Purchaser of Seller's intent not to resolve the condition. The Purchaser shall, within five (5) days of being advised that the condition will not be resolved to its satisfaction, either waive the contingency or terminate this Agreement. Purchaser shall repair any damage to the Property resulting from said investigation and testing or other activity on Property done by or on behalf of Purchaser, and Purchaser agrees to indemnify and hold Seller harmless from any injury or damage caused as a result of such inspections and testing of the Property or any activities of Purchaser or its employees, officers, guests, contractors or invitees who enter upon the Property, which indemnification and hold harmless agreement shall survive the closing or earlier termination of this Contract. Failure of the Purchaser to notify Seller of an unsatisfactory condition within the applicable time period shall constitute an election by the Purchaser to waive the right to terminate relative to the applicable contingency.

C. Purchaser acknowledges that it has inspected or will inspect the Property and has undertaken or will undertake such investigations as it deems necessary to ascertain the physical condition of the Property and will obtain whatever environmental hazard inspection and testing at Purchaser's cost that Purchaser deems sufficient. Further, Purchaser acknowledges that, except for the express warranties and representation of Seller contained in this Agreement, it is purchasing the Property in its present condition "as is" and "where is" and is not relying on any warranties or representations by Seller as to the suitability or adaptability of the Property for its present or any contemplated uses, nor is said Purchaser relying on any representations by Seller to repair, alter, remodel or improve the Property. The Purchaser may terminate this Agreement within sixty (60) days of execution ("Inspection Period") if on completion of his inspections he is unwilling to accept the property in its current condition. If the Purchaser terminates this Agreement during the Inspection Period, any and all rents paid by the Purchaser during the Inspection Period will be retained by the City as rental income.

3.2 Possession shall be given, subject to tenants' rights as tenants, upon closing. Purchaser agrees that as a condition of purchase, Purchaser shall honor the existing lease with Miami University Middletown for the duration of that lease. After the end of the Inspection Period listed in Section 3.1, the Purchaser shall have the right to alter or terminate leases with the American Association of University Women and the Middletown Historical Society.

SECTION 4 – ASSUMPTION OF LIABILITY

4.1 It is agreed and understood that the Purchaser is not assuming any of the liabilities of the Seller and is purchasing only the Assets.

SECTION 5 – EVIDENCE OF TITLE

5.1 Purchaser may order and obtain a title insurance commitment (the "Commitment") and policy for Owner's Title Insurance from an agent selected by Purchaser (herein referred to as the "Title Company"). Purchaser shall pay the search fee and premiums therefor. The Commitment shall show in Seller marketable title in fee simple, free and clear of all liens and encumbrances except: (a) those created by or assumed by Purchaser; (b) those specifically set forth in this Agreement; (c) zoning ordinances; (d) legal highways; and (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with present lawful use (or Purchaser's intended use). Purchaser shall pay any additional costs incurred in connection with mortgagee title insurance issued for the protection of Purchaser's lender. If a new legal description is required to record the deed, Seller shall order, obtain and pay for a new legal description for the Property. If title to all or part of the Property is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association's Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those permitted by this Agreement, the Purchaser may declare this Agreement null and void or may waive such defect and proceed to consummate the transactions contemplated herein. Any title matter reflected in said commitment or on said Survey that is not objected to by written notice to Seller within twenty (20) days after receipt of the commitment and/or Survey, as applicable, shall be deemed to be acceptable to Purchaser.

SECTION 6 – CLOSING

6.1 The closing shall occur at a time and place to be mutually agreed upon by the parties, or, if the parties are unable to mutually agree, at the Title Company thirty (30) days following the expiration of the sixty day (60) contingency period defined in Section 3. On the closing date, upon payment of the purchase price set forth above, Seller shall convey to Purchaser all the Assets purchased under this Agreement by appropriate Quit Claim Deeds, Bills of Sale, Title Documents, Assignments, or other instruments of transfer necessary to convey assets purchased herein satisfactory to the counsel for the Purchaser, free, clear and unencumbered. Additionally, the Seller shall at any time, from time to time after closing, upon the request of the Purchaser, execute any

documents involving title to the Assets that may be required for the better signing, transferring, granting, conveying and confirming to the Purchaser or its successors and assigns any and all of the Assets purchased hereunder.

6.2 Seller shall pay (or provide a credit to Purchaser at closing) all real estate taxes and assessments accrued on the Property, prorated as of the date of closing. Purchaser shall be responsible for paying all taxes, installments of assessments and operating expenses which may become due and payable following date of closing. Real estate taxes and assessments shall be based on the most recent official tax duplicate as of the date of closing.

SECTION 7 – REPRESENTATION OF SELLER

7.1 Seller represents and warrants that:

A. Seller has good legal title to all the Assets and shall transfer all the Assets to the Purchaser free, clear and unencumbered except for any exceptions to the title commitment accepted by Purchaser.

B. The execution and delivery of this Agreement and the consummation of the sale contemplated hereby will not, to the Seller's knowledge, violate any provisions of any applicable law, rule or regulation of any governmental body having jurisdiction or of any agreement to which Seller is a party or which it may be bound.

C. To Seller's knowledge, no representation or warranty by Seller in this Agreement or statement exhibited or scheduled, or in connection with the transaction contemplated hereby, contains or will contain any untrue statement of material facts, or omits or will omit to state material facts, necessary to make the statements contained therein not misleading.

D. To Seller's knowledge, no adjustments, actions, suits at law, including State or Federal administrations, are outstanding. To Seller's knowledge, Seller is not subject to an injunction or other court or administrative orders affecting the Purchaser's ability to perform its obligations hereunder, including, without limitation, such order or injunctions under Federal or State anti-trust, trades regulation, water pollution or environmental protection laws.

E. Seller warrants that it is a municipal corporation duly existing under the laws of the State of Ohio.

SECTION 8 - BROKERS

8.1 Each party represents that there are no brokers involved or brokers' fees to be paid in this Agreement.

SECTION 9 – NOTICES

9.1 All notices to be given to either party shall be deemed given if made in writing and the notice is left with the other party or mailed, registered or certified, and addressed to the parties at the following addresses:

City: Law Director
City of Middletown
One Donham Plaza
Middletown, Ohio 45042

Purchaser: The Windamere LLC
6160 Edna Oaks Court
Dayton, Ohio 45459

SECTION 10 – AUTHORITY

10.1 Each party represents to the other that it has full right and authority to enter into this Agreement and by doing so violates no existing agreement to which it is a party of which it is bound or affected, and that the execution and delivery of this Agreement has been duly authorized by each party's governing body where required.

SECTION 11 – MISCELLANEOUS

11.1 This Agreement, including the attached exhibits constitutes the entire agreement, with respect to the Property, and supersedes any other prior communications, representations or statements with respect to the transaction contemplated in this Agreement. This Agreement may not be modified, altered or amended in any manner except by an agreement in writing executed by the parties. If a court finds any provision of the Agreement to be invalid, all surviving provisions remain enforceable and effective. This Agreement shall be interpreted and governed by the laws of the State of Ohio.

11.2 The City and Purchaser are independent parties. Nothing contained in this Agreement shall be construed to create any special duty, relationship, third-party benefit or relationship, respondeat superior, limited or general partnership, joint venture or any other association between the parties.

11.3 This Agreement shall be binding upon the parties, their heirs, administrators, executors, successors and permitted assigns. The Seller shall not assign its rights and duties under this Agreement. The Purchaser may assign its rights and duties under this Agreement, provided such assignment shall not release the original Purchaser from any liability hereunder. Time is of the essence for all provisions of this Agreement. All provisions of this Agreement shall survive the closing. Paragraph captions are for identification only and are not a part of this Agreement.

11.4 In the event that either party is delayed, hindered in or prevented from the performance of any act by reason of restrictive governmental laws or regulations, the act, failure to act or default of the other party, war or other reasons beyond its' control, including unusually inclement weather, then performance of such act shall be excused for the period for the delay and the period of the performance of such act shall be

extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be a cause beyond the control of either party.

SECTION 12 - EXPIRATION AND ACCEPTANCE

12.1 This offer shall remain open for acceptance until 11:59 p.m. on _____, 2014, and a signed copy must be returned to Purchaser upon acceptance prior to said acceptance deadline consistent with the Notices provisions of Section 9.

IN WITNESS WHEREOF, the parties have set their names and acceptance of this agreement.

THE WINDAMERE LLC

By: _____

By: _____

Printed Name

Printed Name

By: _____

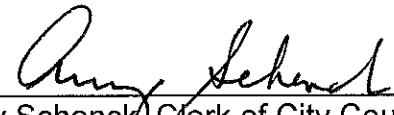
Printed Name

CITY OF MIDDLETOWN

By: 

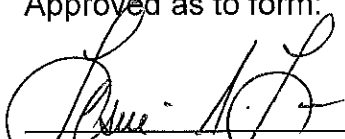
Douglas Adkins, City Manager

ATTEST:



Amy Schenck, Clerk of City Council

Approved as to form:



Leslie S. Landen, Law Director

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Recitals:

WHEREAS, the Seller is the owner of certain real property known as the Bank One Building, (hereinafter "Bank One" or "Property") located at 2 South Main Street, Middletown, Ohio; and

WHEREAS, the Seller desires to transfer said real estate and other property to the Purchaser and Purchaser desires to purchase said real estate and other property from the Seller;

Agreement:

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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1.1 Seller agrees to sell and transfer and Purchaser agrees to purchase and receive the following real estate, fixtures, personal property and intangibles owned by Seller:

- A. The real property, including all improvements, located at 2 South Main Street, Middletown, Butler County, Ohio, more specifically described in Exhibit "A", attached hereto.

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3.1 Environmental Inspection: Within sixty (60) days after Agreement acceptance hereof, Seller agrees to permit the Purchaser, the Purchaser's lender and the qualified, professional environmental consultant of either of them to enter the Property to conduct, at the expense of the Purchaser, an environmental site assessment. Purchaser agrees to indemnify and hold Seller harmless from any injury or damage caused by such inspection.

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7.1 Seller represents and warrants that:

A. Seller has good legal title to all the Assets and shall transfer all the Assets to the Purchaser free, clear and unencumbered except for any exceptions to the title commitment accepted by Purchaser.

B. The execution and delivery of this Agreement and the consummation of the sale contemplated hereby will not, to the Seller's knowledge, violate any provisions of any applicable law, rule or regulation of any governmental body having jurisdiction or of any agreement to which Seller is a party or which it may be bound.

C. To Seller's knowledge, no representation or warranty by Seller in this Agreement or statement exhibited or scheduled, or in connection with the transaction contemplated hereby, contains or will contain any untrue statement of material facts, or omits or will omit to state material facts, necessary to make the statements contained therein not misleading.

D. To Seller's knowledge, no adjustments, actions, suits at law, including State or Federal administrations, are outstanding. To Seller's knowledge, Seller is not subject to an injunction or other court or administrative orders affecting the Purchaser's ability to perform its obligations hereunder, including, without limitation, such order or injunctions under Federal or State anti-trust, trades regulation, water pollution or environmental protection laws.

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THE WINDAMERE LLC

By: _____

By: _____

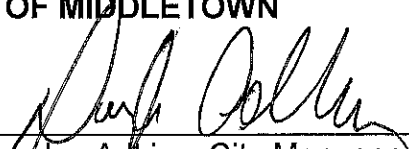
Printed Name

Printed Name

By: _____


Printed Name

CITY OF MIDDLETOWN

By: 

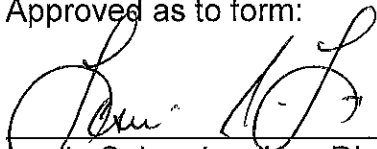
Douglas Adkins, City Manager

ATTEST:



Amy Schenck, Clerk of City Council

Approved as to form:



Leslie S. Landen, Law Director