



**Ohio Real Estate Auctions, LLC**  
**CONTRACT TO PURCHASE AT ONLINE AUCTION**

(This is a legally binding contract. If not understood, seek legal advice. For real estate advice, consult your Realtor)

DATE: January 31, 2019

1. **PROPERTY DESCRIPTION:** The undersigned Purchaser agrees to purchase from the undersigned Owner (Seller) through *Ohio Real Estate Auctions, LLC*, (sometimes hereinafter called the “Broker”, “Auctioneer” or “Auctioneers/Broker”), the following described real estate in Montgomery County, OH (collectively, the “Real Estate”) and more commonly known as:

**Tract 1:** 53,908 SF Office Building on 3.67 Acres Montgomery County Parcel # J44 04103 0021 commonly known as 3100 Kettering, Blvd., Moraine, Ohio 45439

And / Or

**Tract 2:** 3.01 Acre Vacant Commercial Lot fronting on Edgefield Road; Montgomery County Parcel # J44 04103 0025

2. **PRICE AND DEPOSIT:** Purchaser agrees to pay Seller the **High Bid Amount of \$ \_\_\_\_\_** (the “Purchase Price”), together with a **10% Buyer Premium of \$ \_\_\_\_\_** which Buyer shall pay directly to Broker (the “Buyer’s Premium”), for a **Total Contract Price of \$ \_\_\_\_\_** for the subject Real Estate. Purchaser must wire transfer a **Non-Refundable Down Payment** (the “Down Payment”) in the amount of \$ \_\_\_\_\_ (**10% of Total Contract Price**) to Escrow Agent (as defined below) by 5 p.m. Eastern Standard Time of next business day after the Seller’s acceptance of Purchaser’s bid, which shall be applied toward the Purchase Price at closing. In the event the transaction contemplated by this Contract does not close for any reason other than Seller’s default or inability to transfer marketable title at Closing (including without limitation, Seller’s inability to cause its lenders to execute and deliver recordable Releases of any open-end mortgages presently encumbering the Real Property as of the date of this Contract, Purchaser agrees that the Down Payment must be disbursed by Escrow Agent as provided for in paragraph 5 below, **UNLESS** Escrow Agent & Broker are previously notified in writing by purchaser that litigation has been filed with a Court of Competent Jurisdiction (a copy of the filing must be attached).
3. **BALANCE & CLOSING:** The balance of the Total Contract Price shall be paid by certified check or wire transfer at Closing, which shall occur on or before **February 28, 2019, or such other date as the Seller and Purchaser may agree in writing.**
4. Transaction will close through: **M&M Title Co; 7925 Paragon Road, Dayton, Oh. 45459; (937)434-7366; Tyna Brown; tbrown@mmtitle.com** (the “Escrow Agent”).
5. **OBTAINING FINANCING:** THIS PURCHASE IS NOT CONTINGENT UPON THE PURCHASER OBTAINING FINANCING OR UPON PURCHASER’S COMPLETION OF ANY INSPECTION(S) OR OTHER INVESTIGATION(S) OF THE PROPERTY, OR OTHER CONTINGENCIES OF ANY KIND, ASIDE FROM SELLER’S DELIVERY OF MARKETABLE TITLE TO THE REAL ESTATE AT CLOSING. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS BEEN AFFORDED REASONABLE ACCESS TO THE REAL ESTATE AND THE OPPORTUNITY TO CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE REAL ESTATE AS PURCHASER DEEMS REASONABLY NECESSARY. PURCHASER SHALL AND DOES HEREBY KNOWINGLY WAIVE AND FOREVER RELEASE SELLER, ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, MEMBERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND PROFESSIONALS OF EVERY KING, FROM AND AGAINST ANY AND ALL CAUSES OF ACTION, CLAIMS, DEMANDS ARISING FROM OR RELATING TO THE CONDITION OF THE REAL ESTATE, OR ANY PERSONAL PROPERTY OR IMPROVEMENTS CONTAINED THEREIN. THERE ARE NO BUYER CONTINGENCIES, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.
6. **BINDING OBLIGATION:** Purchaser is buying the property “As-Is,” “Where-Is” and “Without Recourse” of any kind. If Purchaser fails to close for any reason other than Seller’s inability to deliver marketable title to the Real Estate at Closing, Purchaser hereby acknowledges and voluntarily agrees that (a) it will forfeit all right and interest in and to the entire amount of the Down Payment, and (b) it will be liable to the Seller

for the full amount of any deficiency, plus court costs and reasonable legal fees, resulting from Seller's subsequent sale of the Real Estate to the next highest bidder(s) or any third party. Time is of the essence and Purchaser's execution of this Contract constitutes an irrevocable offer to purchase the Real Estate, with no contingencies. In the event Purchaser fails to perform according to the terms of this contract, the Down Payment shall be forfeited as partial liquidated damages, and not as a penalty, without affecting any of Seller's further remedies. Either party may demand specific performance of the other's obligations under this contract.

7. **SELLER'S REPRESENTATIONS:** Seller represents to Purchaser that, to the actual knowledge of Jim Farnum, Seller's Regional Facilities Manager for the Mid-West: (A) there are no undisclosed latent defects; (B) Seller has not received any written notice of any pending orders or ordinances or resolutions that have been enacted or adopted authorizing work or improvements which may be assessed against the Real Estate; (C) there are no City, County or State orders that have been served upon Seller(s) in writing requiring work to be done or improvements to be made which have not been performed. Purchaser represents and warrants to Seller that (i) it has heretofore conducted any and all inspections of the Real Estate, including without limitation, any inspections relating to the habitability and suitability of the Real Estate, as Purchaser deems reasonably necessary, and that Seller has afforded it every reasonable access to the Real Estate for such purposes; (ii) Purchaser is solely responsible for all costs and expenses incurred by Purchaser in connection with any such inspection(s), and (iii) Purchaser would not have made or entered into this Contract but for Purchaser's independent determination, without reliance upon any representation or warranties made by Seller (aside from those set forth in this Section above), that the Real Estate is in good and satisfactory condition and suitable for Purchaser's intended purposes. PURCHASER ACKNOWLEDGES AND AGREES THAT THE SELLER HAS NOT MADE ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ASIDE THOSE SET FORTH ABOVE, AND, THAT AUCTIONEERS/BROKER HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES TO PURCHASER OF ANY KIND. PURCHASER HEREBY CERTIFIES AND AFFIRMS THAT (1) IT HAS RELIED SOLELY UPON ITS OWN EXAMINATIONS OF THE REAL ESTATE IN DETERMINING WHETHER TO MAKE AND ENTER INTO THIS CONTRACT AND (2) IT HAS NOT RELIED UPON ANY REPRESENTATION BY THE AUCTIONEERS/BROKER INVOLVED, NONE OF WHOM SHALL BE RESPONSIBLE FOR ANY DEFECTS IN THE REAL ESTATE.
8. **INDEMNITY:** Seller and Purchaser recognize that the AUCTIONEERS/BROKER are relying on information provided by Seller or his/her agents in connection with the Real Estate, and agree to indemnify and hold harmless the Auctioneers/Broker, their agents and employees, from any claims, demands, damages, suits, liabilities, costs and expenses (including reasonable legal fees) against Auctioneers/Broker or either of them, arising out of any misrepresentation or concealment of facts by Seller or its agents.
9. **CONVEYANCE AND CLOSING:** Seller shall convey marketable title to the Real Estate by **Limited Warranty** deed, AND SUBJECT TO SELLER'S RESERVATION OF THE RIGHT EXERCISABLE AT SELLER'S OPTION UPON WRITTEN NOTICE TO BUYER NOT LESS THAN SEVEN (7) DAYS PRIOR TO CLOSING, TO LEASE THE REAL ESTATE FROM PURCHASER FOR A PERIOD OF UP TO THREE (3) MONTHS AFTER THE CLOSING AT A MONTHLY RENTAL RATE OF \$19,194.53/MO. ON TERMS AND CONDITIONS SET FORTH IN THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION'S "STANDARD MULTI-TENANT OFFICE LEASE – GROSS (FORM OFG-21-10; [Rev'd 11-01-2017], ACCESSIBLE AT <https://www.aircre.com/site/wp-content/uploads/2017/10/OFG.pdf>) (the "Short-Term Temporary Lease"). Title shall be good and marketable as of Closing, except restrictions and easements of record and except for any assessments (certified or otherwise) of record.
10. **CONDITION OF IMPROVEMENTS:** The risk of destruction or substantial damage by fire or Act of God prior to delivery of deed is assumed by Purchaser. Seller agrees that on possession, the Real Estate shall be in the same condition as it is on the date of this contract, except for ordinary wear and tear. If the Real Estate should be damaged or destroyed by fire or other casualty and if, prior to Closing, the Real Estate shall not be repaired or restored by and at the Sellers expense, to a condition as good as it was prior to the damage or destruction, then Purchaser, at his option, may terminate this Contract by written notice to Seller and the Down Payment shall be returned to Purchaser. While this Contract is pending, Seller shall not change any existing lease or enter into any new lease, nor make any substantial alterations or repairs without the consent of the Purchaser. In addition, the Purchaser also has an insurable interest in the property from date of this contract. Purchaser is hereby notified that insurance should be placed upon the property immediately to protect Purchasers' interest.
11. **DISCLOSURE:**  Buyer  Seller - is a licensed Real Estate Broker or Sales Person.
12. **POSSESSION:** Possession shall be given at closing subject to, with deed, but subject to the Short-Term Temporary Lease referenced above, if applicable. Until such date, Seller shall have the right of possession free of rent, but shall pay for all utilities. After such date, Seller shall have the right of possession subject to the Short-Term Temporary Lease. No work can be done on the property by the Purchaser until possession is given.
13. **AGENCY DISCLOSURE STATEMENT:** Purchaser acknowledges having reviewed and signed the Agency Disclosure Statement.

14. **SOLE CONTRACT:** The parties agree that this offer constitutes their entire agreement and that no oral or implied agreement exists. Any amendments to this offer shall be made in writing, signed by all parties, and copies shall be attached to all copies of the original offer. This offer shall be binding upon the parties, their heirs, administrators, executors, successors and assigns.
15. **TERMS:** The property sells subject to stated minimum bid(s) at auction end or stated "Buy-Now" price(s) (*i.e.*, the Purchase Price specified in Section 2 above).
16. **TAXES:** Real Estate taxes will be prorated using the Short Proration Method. In this formula, Buyer will assume accrued taxes for a 6 month period of time in which the Seller owned the property.
17. **THE REAL ESTATE IS BEING SOLD AT PUBLIC AUCTION, WITHOUT RECOURSE. PERSONAL ON-SITE INSPECTION/S OF THE REAL ESTATE IS STRONGLY RECOMMENDED. THE REAL ESTATE AND ANY PERMANENT FIXTURES CONTAINED THEREIN WILL SELL "AS IS, WHERE IS," WITH NO WARRANTY, EXPRESS OR IMPLIED AS TO IMPROVEMENTS, AVAILABILITY OF UTILITIES, ZONING, OR ENVIRONMENTAL AND WETLAND ISSUES, OR OTHER CONDITIONS OR ISSUES OF ANY KIND, EXCEPT FOR THE WARRANTY OF TITLE COMTEMPLATED BY THE LIMITED WARRANTY DEED REFERENCED IN SECTION 9 ABOVE.** Information presented online and in all other marketing materials was obtained via sources deemed reliable. However, neither Ohio Real Estate Auctions, LLC nor their agents will be responsible for any errors or omissions herein. Announcements made at the auction will take precedence over written material, advertisements, or any other oral statements made prior to the day of auction. Purchasers should carefully verify all items and make their own decision as to the accuracy thereof before relying on same. Except in the case of an absolute auction, Seller reserves the right for itself and its agents, to bid on behalf of the Seller. The Auctioneer/Broker reserves the right to bid on behalf of themselves at any auction. The Seller and Auctioneers/Broker reserve the right to preclude any person from bidding if there are any questions as to the person's credentials, fitness, etc.
18. Auctioneers/Broker hereby acknowledge that they represent the Seller. An Agency Disclosure Statement must be signed by the Purchaser.
19. Purchaser shall be responsible for all transfer taxes, recording fees, title search, and deed preparation. Seller is responsible for real estate tax prorata, mortgage releases and guarantees to convey a good and marketable title. The  Purchaser,  Seller,  split 50/50, is responsible for survey cost, if a survey is required for a transfer. **\*Purchaser is responsible for all other costs associated with closing.**
20. By bidding, Purchaser shall and does hereby waive any right which it might otherwise have under applicable law to rescind this Contract.
21. Real Estate is sold through Ohio Real Estate Auctions, LLC.
22. **EXPIRATION AND APPROVAL:** Accepted
23. **MAKE DEED TO:** (print) \_\_\_\_\_

*[Signatures on Following Page(s)]*

24. Purchaser has read, fully understands and approves the foregoing Contract To Purchase and acknowledges receipt of a signed copy.

Print

Sign

Date

PURCHASER: \_\_\_\_\_

PURCHASER: \_\_\_\_\_

FULL ADDRESS: \_\_\_\_\_

PHONE NUMBERS: \_\_\_\_\_

27. **ACTION BY OWNER:** The undersigned Seller has read and fully understands the foregoing offer and hereby:  Accepts said offer and agrees to convey the Real Estate according to the above terms and conditions,  Rejects said offer, or  Counteroffers according to the modifications initialed by Seller(s). Counteroffer shall become null and void if not accepted in writing on or before \_\_\_\_\_ o'clock  A.M.  P.M. EASTERN STANDARD TIME on \_\_\_\_\_, 20\_\_\_\_. Seller acknowledges that Agency Disclosure Statement has been signed.

28. **SELLING FEES AND EXPENSES:** Seller is to pay an auction selling fee and reimburse agreed expenses as per the Auction Contract.

Print

Sign

Date

SELLER: DEX MEDIA, INC.

FULL ADDRESS: 2200 W. Airfield Drive, P.O. Box 9560, DFW Airport, Texas 75261-9560

29. **DEPOSIT RECEIPT:** Deposit of: \$ \_\_\_\_\_ is to be wired to **M & M Title Company** as down payment in accordance with the terms herein provided.



## Irrevocable Letter of Instruction Re: Down Payment

I have agreed to purchase the real estate located at:

**Tract 1:** 53,908 SF Office Building on 3.67 Acres Montgomery County Parcel # J44 04103 0021 commonly known as 3100 Kettering, Blvd., Moraine, Ohio 45439

And / Or

**Tract 2:** 3.01 Acre Vacant Commercial Lot fronting on Edgefield Road; Montgomery County Parcel # J44 04103 0025

under the terms and conditions of the attached Contract to Purchase at Online Auction dated: **January 31, 2019.**

As part of this transaction I have made a down payment of money to **M & M Title Company** who will hold the money in Trust as Escrow Agent until closing.

I understand the funds I have provided **M & M Title Company** are to be applied to the Total Contract Price. However, in the event I do not close on this property on or before **February 28, 2019 at 5:00pm**, I irrevocably instruct **M & M Title Company** to disburse my down payment as required under paragraph 2 of the contract. **UNLESS** Escrow Agent & Broker are previously notified in writing by Purchaser that litigation has been filed with a Court of Competent Jurisdiction (a copy of the filing must be attached).

Paragraph 2 states:

**PRICE AND DEPOSIT:** Purchaser agrees to pay the amount of the **High Bid of \$280,500** plus the **10% Buyer Premium of \$28,050** for a **Total Contract Price of \$308,550** for the Subject Real Estate. **A Non-Refundable Down Payment of 30,855 (10% of Total Contract Price)** is to be paid to & deposited by Escrow Agent upon acceptance and applied toward the Total Contract Price at closing. In the event this transaction does not close for any reason other than non-marketable title or as otherwise agreed by ALL parties, Purchaser agrees that the down payment shall be disbursed by Escrow Agent as provided for in paragraph 5 below, **UNLESS** Escrow Agent & Broker are previously notified in writing by Purchaser that litigation has been filed with a Court of Competent Jurisdiction (a copy of the filing must be attached).

Pursuant to paragraph 2, upon written instruction from the Broker and the authority granted in this Irrevocable Letter of Instruction, I authorize and direct **M & M Title Company** to follow the instructions of the Broker as to the distribution of my down payment.

Further, I agree to hold Broker & **M & M Title Company** harmless for any such disbursements to any individuals or entities.

I have reviewed the Contract to Purchase at Online Auction dated **January 31, 2019** and this Irrevocable Letter of Instruction and:

1. I understand the terms and conditions of both documents. **(Initial)**\_\_\_\_\_
2. I have voluntarily executed these agreements. **(Initial)**\_\_\_\_\_
3. I acknowledge this authorization and my direction to Escrow Agent may result in none of my down payment being returned to me. **(Initial)**\_\_\_\_\_

Dated: \_\_\_\_\_

**Purchaser:**

Print: \_\_\_\_\_

Sign: \_\_\_\_\_