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**COURT OF COMMON PLEAS  
BROWN COUNTY, OHIO**

<b>TINA MARCK, et al.,</b>	:	<b>CASE NO. 2020 0399</b>
	:	
	:	
<b>Plaintiffs</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>THOMAS PARTIN, et al.,</b>	:	
	:	
	:	
<b>Defendants.</b>	:	

**SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
RELIEF, DAMAGES, AND CLASS ALLEGATIONS**

Come now Plaintiffs, Tina Marck, Cody Rutherford and Bethanie Rothwell, Diana and Nicholas Waldman, Charles and Ticey Elliot, Betty Curless and Bertha Popp, Shannon Watson, and Tyrea Bragg, by counsel, and for their Complaint, state as follows.

**I. INTRODUCTORY STATEMENT**

1. Plaintiffs, and members of Plaintiffs’ class (hereinafter “class members”), are all persons who have been victimized by an unlawful residential real property scheme devised and operated by Defendants. Plaintiffs and the class members entered into agreements with one of the various Defendants, or with entities controlled by one or more Defendants. These agreements, which are written and prepared by Defendants, violate numerous federal and state laws designed to protect residential purchasers and tenants from predatory practices. The contracts are often called "Rent to Own" or “Lease With Option to Buy” (hereinafter “Rent to Own”).

2. Defendants' residential property sales scheme has caused Plaintiffs and the class members to each lose thousands of dollars, which, in many cases, constitutes their life's savings.
3. Under Defendants' unlawful "Rent to Own" scheme, Defendants: (1) attract potential buyers with the possibility of home ownership; (2) have the purchasers/renters sign ambiguous, contractual documents obligating Plaintiffs and class members to pay what is classified as "rent" in monthly installments over a thirty-year period; (3) charge Plaintiffs and class members a seven percent (7%) down payment on the purchase price, and obligate payment of the balance at a twelve percent (12%) per annum, or greater, interest rate built into the thirty years of rental payments; (4) require Plaintiffs and class members to pay all property insurance and property tax obligations on the real property in equal monthly installments; and (5) unlawfully retain the right to evict Plaintiffs and the class members if a purchaser/renter becomes more than ten (10) days in arrears on any financial obligation under the contract, rather than having to utilize lawful forfeiture and foreclosure procedures. With the unlawful power to evict, or, in many cases, when the purchaser walks away from the predatory "Rent to Own" contract, Defendants are able to restart the same predatory sales/rental process on another unsuspecting purchaser.
4. These "Rent to Own" contracts constitute residential mortgage transactions within the meaning of 15 U.S.C. § 1602(x), and 12 C.F.R. § 1026.32(a)(1). Significantly, these contracts are "high-cost mortgages" within the meaning of 15 U.S.C. § 1602(bb). As a result, Defendants have violated various provisions of the Truth-In-Lending Act ("TILA") and the Home Ownership Equity Protection Act ("HOEPA") by failing to provide mandated disclosures and protections to Plaintiffs and the class members required under 15 U.S.C. § 1602, *et seq.*
5. These "Rent-To-Own" contracts and Defendants' practices violate various laws of the State of Ohio including but not limited to: basic protections provided for tenants under the Ohio Landlord-Tenant Act; protections provided to purchasers of real estate under the Ohio Land Installment Contract Act; consumer protections provided by the Ohio Consumer Sales Practices Act; protections for consumers provided by the Ohio Nonbank Mortgage Lender Law; protections provided by the Ohio Mortgage Brokers and Lenders Act; and other Ohio laws.

## **II. JURISDICTION AND VENUE**

6. This Court has jurisdiction over all of Plaintiffs' claims brought under the laws of the State of Ohio, and jurisdiction over all of the federal claims pursuant to the provisions of 15 U.S.C. § 1640.
7. Venue is proper because many of the real properties subject to Defendants' practices described herein are located in Brown County, Ohio.

### III. PARTIES

8. Plaintiff Tina Marck, on or about June 14 and July, 2016, entered into Rent to Own agreements with Defendants, Heritage LLC and Thomas Partin, for the rent and purchase of residential property in Brown County, Ohio, and located at 17304 State Route 68, Mt. Orab, Ohio. Copies of these agreements are attached as Exhibits 1 and 2 to the Complaint previously filed in this action. Exhibits 1 and 2 provide that Marck will purchase this property for the agreed amount of Sixty-Nine Thousand Nine Hundred Dollars (\$69,900.00) with payment of Four Thousand Eight Hundred Ninety-Three dollars (\$4,893.00) down and the balance paid under a thirty-year term at twelve per cent interest.
9. Plaintiffs Diana and Nicholas Waldman are a married couple and, on or about November 5, 2010, Diana Waldman entered into a written agreement with Defendants, Gary Rowland, Thomas Partin, and Heritage Unlimited, LLC, which provided for the rent and purchase of residential real property located at 115 Orchard Avenue, Winchester, Ohio, in Adams County. The purchase price of the property was approximately \$56,000.00.
10. Plaintiff, Bethanie Rothwell, at all times relevant, is married to Plaintiff Cody Rutherford (hereinafter, "Rothwell" and "Rutherford," respectively). On or about May 15, 2019, Plaintiff Rothwell, entered into a "Rent to Own" contract with Defendant, Heritage Unlimited, LLC, for real property located at 809 Jack Roush, Manchester, Ohio, at the price of \$54,900.00. Sometime around mid-August 2019, Rothwell later entered into a revised "Rent to Own" contract with Defendants. The August contract was backdated to May 15, 2019, and is attached as Exhibit 6 to the Complaint previously filed in this action.
11. Plaintiffs, Charles and Tacey Elliot, are a married couple and, on or about June 25, 2013, entered into a contract with Defendants, E.T.C. FBO Edmond Taylor IRA and Thomas Partin entitled "Lease With Option To Buy" for property located at 2917 Fair oak Road, Amelia, Ohio. A copy of this contract is attached as Exhibit 7 to the previously filed Complaint. On or about October 22, 2019, Defendant, E.T.C. Edmond Taylor IRA, executed a deed for the transfer of the property to Plaintiffs which was secured by a mortgage executed by Plaintiffs attached hereto to the previously filed Complaint as Exhibit 8.
12. Plaintiffs Betty Curless and Bertha Popp entered into an agreement with Defendant Thomas Partin entitled "Rent-to-Own" on or about September 7, 2017, which involved residential real estate located at 1311 Woodville Pike, Milford, Ohio, in Clermont County.

13. Plaintiff Shannon Watson entered into a “Rent-to-Own” agreement with E.T.C. FBO Thomas Partin IRA and E.T.C. FBO Nathan Skaggs involving real property and a manufactured home located at 13045 Lower Cumberland Road in Brown County, Ohio, on or about October, 2018. On information and belief, E.T.C. FBO Nathan Skaggs is no longer involved in this transaction. Shannon Watson paid \$5,943.00 as a down payment and was required to finance the balance of \$78,957.00 at the interest rate of 12% over a period of thirty years, plus payment of insurance and property taxes.
14. Plaintiff Tyrea Bragg entered into a “Rent-to-Own” agreement with Thomas Partin involving residential property located at 520 East 7<sup>th</sup> Street, Manchester, Ohio, in Adams County on or about November 1, 2019. A copy of this agreement is attached hereto and incorporated herein as Exhibit 14.
15. Defendant Thomas Partin has acted individually as the vendor or lessor in these real estate transactions and operates as a part owner or partner in conjunction with the other Defendants in this action as set forth below. Thomas Partin, owns or controls, either completely or partially, or has acted in concert with, the other entity Defendants, which have committed the same unlawful practices described herein. Defendant Melissa Partin is the spouse of Thomas Partin and part owner of some of the properties marketed to the class members. These Defendants own residential properties in all of the counties described above, including Brown County, and regularly conduct business in Brown County.
16. Defendant Brush Creek Motor Sports Complex, LLC. (hereinafter Brush Creek), is an Ohio limited liability company. Brush Creek owns residential property in some or all of the counties described above. Brush Creek has engaged in the unlawful practices described herein, which have victimized Plaintiffs and class members. Brush Creek is operated by Defendant Thomas Partin, and other members of his family, including Defendant Melissa Partin.
17. Defendant Heritage Unlimited, LLC, (hereinafter Heritage), is an Ohio limited liability company. Heritage owns residential property in some or all of the counties described above, including Brown County and regularly conducts business in Brown County. Heritage has engaged in the unlawful practices described above which have victimized Plaintiffs and class members. Heritage is operated by Defendant, Thomas Partin. In addition to the above activities, Heritage operates as the agent for the other Defendants by handling the installment payments, insurance payments, property tax payments, and utility payments made by Plaintiffs and the class members. Heritage has acted as the real estate broker, mortgage broker, and agent, on behalf of Defendant, ETC Custodian FBO Edmond Taylor IRA, in the transactions with Plaintiffs, Charles and Tacey Elliot, as well as acting in the same capacities with respect to transactions involving other Plaintiffs and class members.

18. Defendant Capital Investment Priorities, Ltd., (hereinafter Capital Investment), is an Ohio limited liability company. Capital Investment owns residential property in some or all of the counties described above. Capital Investment has engaged in the unlawful practices described herein, which have victimized Plaintiffs and class members. Capital Investment is owned and operated, either in whole or part, by Defendant, Thomas Partin.
19. Defendant DECA Management, Inc., (hereinafter DECA), is a for profit corporation organized under the laws of the State of Ohio. DECA owns residential property in some or all of the counties described, including Brown County and regularly conducts business in Brown County. DECA has engaged in the unlawful practices described herein, which have victimized Plaintiffs and class members. Defendant, Thomas Partin is a part owner of DECA and controls its operations.
20. Defendant Equity Trust Company Custodian FBO Thomas Partin IRA, (hereinafter Equity Trust), is a business entity which owns residential properties as a vehicle to hold retirement assets, of Defendant, Thomas Partin. Equity Trust owns real estate in counties described above, including Brown County and regularly conducts business in Brown County. It has engaged in the unlawful practices described above which have victimized Plaintiffs and class members. Equity Trust, is an entity comprised solely of Thomas Partin's retirement assets and it is controlled by Thomas Partin.
21. Defendant Gary Rowland owns residential property in at least one of the counties described above. Defendant Rowland, either individually, or in concert with Defendants, Thomas Partin and Heritage Unlimited, LLC, has engaged in the unlawful practices described herein, which have victimized Plaintiffs and class members, including Plaintiffs, Nicholas and Diana Waldman.
22. Defendant Regal Partnership is a partnership in which Defendant, Thomas Partin, is a general partner. Defendant Partin owns real properties in all of the counties described above, including Brown County and regularly conducts business in Brown County. Regal Partnership has engaged in the unlawful practices described herein, which have damaged Plaintiffs and class members.
23. Defendant E.T.C FBO Edmond Taylor IRA is a business entity which holds retirement assets of Edmond Taylor. This entity has transacted business with Plaintiffs Charles and Ticey Elliot as described herein.

#### **IV. FACTS**

24. Defendants operate an illegal sales and rental scheme described herein out of offices in West Union, Ohio, which are located at 720 East Main Street and owned by Defendant Thomas Partin. These transactions involve residential real

- property in Ohio, and situated primarily in Adams County, Brown County, Highland County, Clermont County, and Scioto County.
25. Defendants typically acquire these residential properties through distressed sales, such as foreclosure sales.
  26. After acquiring residential properties, Defendants market the properties to Plaintiffs and the class members through a contract drafted by Defendants and often called "Rent to Own." The sale price is usually close to double the cost of acquisition of these properties. These residential properties are often in a very poor condition and in need of substantial repairs. Plaintiffs and the class members are generally persons desiring homeownership but often lacking the financial ability to obtain conventional mortgage loans.
  27. Defendants' business model, an alternative to a traditional mortgage loan, involves one or more of the Defendants providing financing by regularly extending credit to Plaintiffs and class members for the ostensible purpose of purchasing their homes. Seller financing means that the property seller, in this case Defendants, rather than a bank, provides the funding to finance the property purchase by Plaintiffs and class members. Instead of advancing money to the purchaser as a typical bank would do, Defendants charge a down payment of usually seven per cent of the purchase price set by Defendants and extend credit to Plaintiffs and class members by deferring payment of the balance of the purchase price over a specified period of time which is typically thirty years at an established interest rate usually at twelve per cent. Defendants hold title to the real estate until all payments are made, at which time after the scheduled thirty years of payments, title is supposed to pass the buyer. The periodic payments Plaintiffs and the class members are required to pay are called "rent payments" under a thirty-year monthly rent schedule. In reality, Plaintiffs and class members are led to believe by Defendants they are making installment payments for the purchase of real estate. Defendants applied this same model to each of the Plaintiffs and class members in this case. Some of these contracts provide that, after a period of five years, the purchaser may acquire a deed to the property secured by a mortgage while while being obligated under the same original debt and interest rate (i.e. twelve per cent).
  28. As an additional purported rental or installment payment, Plaintiffs and the class members are required to pay Defendants all property tax charges for the property on a monthly basis in addition to the monthly rent or installment payments.
  29. Plaintiffs and the class members are required to pay an amount purportedly for insurance premiums on the property also paid on a monthly basis in addition to the monthly rent or installment payment. Yet, Defendants routinely fail to provide Plaintiffs and the class members a copy of the actual insurance policy. Defendants never provided an annual statement of the escrow account which would include both the property tax and the insurance payments, nor do

Defendants maintain a separate escrow account for handling the tax and insurance payments. Plaintiffs and the class members are often required to pay the water bill to Defendants with a Five Dollar monthly processing fee.

30. When it benefits Defendants, Defendants would claim that these “Rent to Own” and similar contracts are land installment contracts under Ohio law. Yet Defendants purposely fail to follow many of the statutory protections for vendees under Ohio Land Installment Contract laws often including but not limited to the following requirements set forth in R.C. 5313.02: failing to provide the full names and mailing addresses of all the parties to the contract; failing to provide the legal description of the property to be conveyed; failing to provide the contract price; failing to provide the amount of the down payment and the interest rate on the unpaid balance; failing to provide statements that Defendants, as vendors, will deliver a general warranty deed or a deed as required by R.C. 5313.02(A)(11); failing to include a provision that Defendants would provide evidence of title; and failing to provide a provision that Defendants will record the agreement. While Ohio law directly imposes the duty to record land installment contracts within twenty days of execution by the parties, Defendants never record these agreements. In almost all of these transactions, Plaintiffs and the class members are given unsigned or not properly executed copies of the contractual documents.
31. As a result of the deficiencies in Defendants’ practices described above, Plaintiffs and the class members are not provided documents which are required by and would be enforceable under Ohio law.
32. The “Rent to Own” and similar agreements, which Defendants have had Plaintiffs and class members execute, are worded in a manner to provide Defendants with all of the rights of a residential landlord rather than those of a land installment contract vendor when it works to Defendants’ economic advantage to improperly regain the property and cause Plaintiffs and the class members to forego their statutory rights and to lose their entire investment. By illustration, Defendants unlawfully retain and exercise the purported right to evict Plaintiffs and the class members if the purchaser/tenant is in arrears more than ten days in a monthly rental or installment payment, or in arrears on any financial obligation, including insurance, property taxes, or water utility payment. However, despite their efforts to assume the rights of a residential landlord, Defendants failed to assume any of the statutory obligations of a residential landlord established by the Ohio Legislature under R.C. 5321.04, including the obligation to keep the premises fit and habitable and comply with all applicable building, housing, health, and safety codes that materially affect the health and safety of the tenants.
33. Defendants’ violation of all landlord obligations while unlawfully retaining the right to evict creates an unconscionable economic advantage for Defendants by disavowing the normal expenses associated with a landlord’s statutory obligations while unlawfully asserting a right to evict and then marketing the property quickly again.

**Named Plaintiff Tina Marck**

34. Plaintiff Tina Marck, on or about June 14, 2016, signed documents (Exhibits 1 and 2 are attached to the previously filed Complaint) both entitled "Rent to Own" for the purchase or rent of residential premises in Brown County located at 17304 State Route 68, Mt. Orab, Ohio.<sup>1</sup> Exhibits 1 and 2 provide that Plaintiff Marck will purchase this residential property for the agreed amount of Sixty-Nine Thousand, Nine Hundred Dollars (\$69,900.00) with payment of Four Thousand, Eight Hundred, Ninety Three Dollars (\$4,893.00) down and the balance paid under a thirty year term at twelve percent interest, plus payment of taxes and insurance by Plaintiff Marck. Exhibit 1 does not indicate who is the actual seller and owner of this property other than Defendant Heritage Unlimited, LLC. Thereafter, Exhibit 2 identifies Defendant Thomas Partin as the owner/landlord and Tina Marck as the purchaser/tenant. This document lists the total "rent payment" to be \$794.58/month, with \$668.67 being apportioned as "monthly mortgage;" \$83.61 apportioned for "monthly taxes;" and \$42.30 apportioned for "monthly insurance," and with Plaintiff being responsible for payment of all utilities. Unlike a land installment contract or other actual purchase contract, Exhibit 2 purports to give Defendant Partin the rights as a landlord to evict her for non-payment of rent in arrears by more than ten days or for the failure to meet the other financial obligations including: utilities, insurance, and property taxes. Plaintiff Marck never received an actual signed copy of this document. In addition, Plaintiff Marck never received a residential disclosure statement required by R.C. 5320.30.
35. On or about May 29, 2019, Plaintiff got behind in payment of her water bill and she received a "Notice to Leave the Premises" document from Defendant, Partin. A copy of said Notice is Plaintiffs' Exhibit 3 attached to the previously filed Complaint. Plaintiff paid this bill to avoid eviction.
36. On or about May, 2019, Plaintiff had her septic system inspected and was advised that the leach lines for the system were non-functional and broken. Although Defendant was or reasonably should have been aware of this latent defect in the premises, he did not disclose it at the time of sale. The cost of repair of these lines was prohibitive and as a result thereof, Plaintiff was unable to afford the repairs and maintain her installment payments and consequently vacated the property and lost her entire investment described above, including her down payment.
37. Although Defendant purported to retain and unlawfully did exercise the ostensible right of a landlord under Ohio law to evict Plaintiff, Defendant would not assume the obligations of a residential landlord under R.C. 5321.04 and assume responsibility for the faulty septic system. At no time did Plaintiff ever receive signed copies of the "Rent to Own" contract. Plaintiff never received any copies

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<sup>1</sup> Exhibits 1-9, inclusive, are attached to the previously filed Complaints and are incorporated by reference herein.

of the insurance contract for which she was paying, nor did Defendant, Heritage Unlimited, LLC, properly calculate Plaintiff's property taxes for which she was charged.

**Named Plaintiffs Diana and Nicholas Waldman**

38. Plaintiffs Diana and Nicholas Waldman are husband and wife. On or about November 5, 2010, Diana Waldman signed documents which were represented to them by Defendant to be a land installment contract for the purchase of residential real estate located at 115 Orchard Avenue, Winchester, Ohio. The sellers of the real estate were represented to be Defendants, Gary Rowland and Heritage Realty, LLC. These Defendants failed to provide a signed copy of the document to these Plaintiffs. However, these Plaintiffs were requested to sign a document entitled "Waiver and Release" on November 5, 2010. A copy of this document is Exhibit 4 in the previously filed Complaint herein. Exhibit 4 references the prior document signed by Plaintiff with Defendants, Heritage Limited, LLC., and Gary Rowland, as a "Lease with Option to Buy" and further states "that they will not receive a deed until all the terms are fulfilled on the sixtieth month, and a mortgage will be recorded for the remaining balance owed." Diana Waldman did receive a Residential Property Disclosure Form, Exhibit 5, on or about November 5, 2010, but this document listed the initials of the owner as "TP." At the time Ms. Waldman signed the contract represented by these Defendants to be a land installment contract, the Waldmans made a down payment of approximately \$5,500.00 to these Defendants, which they were advised would be applied to the purchase price. This down payment was derived from the Waldmans' entire retirement account. Diana Waldman was advised by Defendants that, in addition to the purchase price on the property, she would be paying a monthly insurance premium insuring the property as well as the property taxes. She was required to make the water payments on the property.
39. After the Waldman faithfully paid Defendants under this agreement for five years, they requested that they be provided with the deed and were told that everything was taken care of and nothing further needed to be done, falsely suggesting to the these Plaintiffs that Defendants had executed a deed to the property, transferring legal title these Plaintiffs. Despite this, Plaintiffs never received a deed for this property. The monthly payment Plaintiffs paid to these Defendants for purchasing the property, including interest charged, was \$525.18. After Defendants included the property taxes and the insurance premium, the total monthly payment was approximately \$630.00 per month. Despite charging for what was falsely claimed by these Defendants to be property taxes and an insurance premium, these Plaintiffs were charged by Defendants and paid to Defendants an amount greater than the amount claimed to be for property taxes and never received any documents describing the insurance contract which they had purchased. During the period from November, 2010, to early 2019, in which Plaintiffs occupied the property, they made substantial upgrades to the property

including but not limited to: installation of pavers; installation of kitchen cabinets; and installation of ceramic tile flooring.

40. In 2017, these Plaintiffs' house sustained substantial wind damage to the roof. As a result thereof, they called Defendant, Heritage Unlimited, LLC, requesting that a claim for insurance coverage for these damages be made. In response, they were told that there is no coverage for wind damage despite never having been provided an insurance contract. Furthermore, despite being told that they were purchasing the property and were not in a landlord-tenant relationship, when Plaintiffs were behind in payment of their water bill, these Defendants served these Plaintiffs with a three day eviction notice. Defendants never made any repairs to the roof damaged by the wind which caused water to leak into the house. In 2019, because Diana Waldman never received a deed to the property and never received insurance coverage for the damaged property, Plaintiffs were unable to make the necessary repairs and continue to pay the installment payments and, consequently vacated the property and have lost their entire investment. The Waldmans' damages exceed an amount greater than Twenty-Five Thousand Dollars (\$25,000.00).

**Named Plaintiffs Cody Rutherford and Bethanie Rothwell**

41. Plaintiffs Cody Rutherford and Bethanie Rothwell at all times relevant to this action are husband and wife. On or about May 15, 2019, Plaintiff Rothwell contacted a woman named "Rhonda," who described herself as a realtor working for Defendant Heritage and had authority to make binding representations on its behalf. Bethanie Rothwell indicated that she and her husband were interested in purchasing as their home property listed for sale by Defendant Heritage located at 809 Jack Roush, Manchester, Ohio. Rhonda showed Plaintiffs the house and stated that they would be required to pay \$3,950.00 as a down payment. Plaintiffs, Rothwell and Rutherford, replied that they did not have the funds immediately but would obtain the funds in a few days by borrowing against Cody Rutherford's 401K asset.
42. The following morning, Rhonda warned Ms. Rothwell that many people are interested in purchasing the same home and she would need to pay \$550.00 to hold the house for them. These Plaintiffs immediately paid the \$550.00 plus \$3,950. At that time, Rhonda at Defendant Heritage's office in West Union, Ohio, presented Ms. Rothwell with a "Rent-to-Own" contract which Ms. Rothwell signed with the expressed intent to purchase the residence. As a result, Bethanie Rothwell signed the contract which provided for payment of monthly installments of \$525.00 for a period of 30 years, similar to the other "Rent to Own" agreements described above.
43. As with the other "Rent-to-Own" contracts, this agreement provided that the Heritage as seller could terminate the agreement if "tenants are in default for: non-payment of rent for more than 10 days." At the time this contract was signed.

Rhonda did not give Ms. Rothwell a copy of the contract claiming that the copying machine was not operating. At no later time was a copy of this contract ever provided to these Plaintiffs.

44. When Plaintiff Rothwell signed the contract agreeing to pay \$525.00 per month, Rhonda promised that Heritage would take care of the mold and foundation problem in the basement; install new carpeting; and install a new hot water heater in the house. Plaintiffs were led to believe by Heritage that these repairs were included in the purchase price of the premises. Thereafter, Defendant did install a new water heater but failed to install the promised carpeting. Some work on the basement foundation was performed, but it was inadequate. During the next couple of months, Plaintiffs, Rothwell and Rutherford, did not move into the house, because they were expending substantial effort painting, and repairing the interior of their home. At a later time, Ms. Rothwell returned to Heritage's office, she again advised Rhonda of the need for the installation of the carpet which never occurred.
45. On or about July 23, 2019, Plaintiff Rothwell paid \$525.00 monthly rent or installment payment to Defendant Heritage. By the time the August, 2019, installment was to be paid, Plaintiffs had moved into the house. Plaintiffs, Rothwell and Rutherford, returned to Heritage's office in West Union. At that time in mid to late August, 2019, they were told by another employee that Rhonda failed to explain that the \$525.00 per month payment only covered rent and did not include taxes and insurance, which purportedly should have made the monthly total due to be \$618.00 per month. Plaintiffs were informed that they needed to pay \$798.00 immediately to catch up on the contract. A second "Rent to Own" agreement was presented and included these additional charges. A copy of this agreement is Exhibit 6. Although Ms. Rothwell signed this agreement, shortly thereafter, these Plaintiffs determined that they could not reasonably afford to pay the higher amount and cover the cost of the needed repairs and therefore moved out of the house.
46. Because Heritage breached their agreement by failing to make the promised repairs and unilaterally raising the monthly installment amounts, Plaintiff Rothwell made several inquiries at Heritage's office about recovery of their \$4,500.00 down payment on the property. Defendant Heritage failed to respond to these inquiries and never returned these funds.

**Named Plaintiffs Charles and Ticey Elliot**

47. Plaintiffs Charles and Ticey Elliot entered into a "Lease With Option To Buy" contract with Defendants Thomas Partin and E.T.C FBO Edmond Taylor IRA with the intent to purchase the property located at 2917 Fairoak Road, Amelia, Ohio, in Clermont County. That document is Exhibit 7. Under the terms of Exhibit 7, Plaintiffs Charles and Ticey Elliot made monthly installment payments for this residential property in the amount of \$620.84 per month along with a

- payment of \$138.24 per month purportedly for real estate property taxes and \$35.50 per month for insurance. In addition to these payments, these Plaintiffs paid Defendants the sum of \$4,543.00 as a down payment. From June, 2013 through, September, 2019, these Plaintiffs made their monthly installment payments to these Defendants as set forth on Exhibit 7. During this same time period, these Plaintiffs experienced various problems with their home requiring repair to the back door and flooring of their house; repair to a laundry room floor; repair to a bathroom floor; roof repairs; and repair to the air conditioning unit. These repairs were made in order to keep the premises habitable and safe. Under Exhibit 7, the Plaintiffs were obligated to make such repairs at their own expense and Defendants assumed no obligations to Plaintiffs as a residential landlord.
48. During the same time period, Plaintiffs at times were late in payment of their monthly installment and Defendants imposed a \$50.00 late fee for all payments not made by the tenth day of the month. During this time, Defendants served Plaintiffs with various "eviction notices" based upon non-payment of Plaintiffs' rent or installment obligations under the lease.
  49. During this same time period, these Plaintiffs experienced damages to the roof of the premises. Despite faithfully paying the purported insurance payments under the terms of the contract, these Plaintiffs never received a copy of their insurance policy. Plaintiffs believe that these Defendants never used the portion of the installments that was supposed to go to the purchase of insurance and instead retained those funds. Thus, Defendants falsely represented that such portions of the monthly installment would be used to purchase insurance coverage for Plaintiffs' home. Thus, Plaintiffs were prevented by these Defendants' conduct from asserting a claim for damages under such non-existent policy.
  50. Plaintiffs continued to make their monthly installments payments to these Defendants under the terms of their contract through November, 2019. Pursuant to the terms of Exhibit 7, Plaintiffs were entitled to and demanded delivery of a deed and mortgage in June, 2018, transferring ownership and lawful title to these Plaintiffs. Defendants, E.T.C. FBO Edmond Taylor IRA and Thomas Partin failed to provide a deed to the real property to these Plaintiffs until November, 2019. A copy of the mortgage agreement which these Plaintiffs executed is attached as Exhibit 8 to the previously filed Complaint. Under the terms of Exhibit 8, these Plaintiffs were to pay the principal balance at the interest rate of 12%, plus insurance and property taxes.

**Named Plaintiffs Betty Curless and Bertha Popp**

51. On or about September 7, 2017, Plaintiffs Betty Curless and Bertha Popp (who are daughter and mother respectively) entered into a written agreement entitled "Rent To Own" with respect to real estate located at 1311 Woodville Pike, Milford, Ohio. A copy of this agreement is attached to the previously filed

Complaint and incorporated herein as Exhibit 9. At all times relevant to this action, Defendant Thomas Partin, was the record owner of the real property located at 1311 Woodville Pike, Milford, Ohio.

52. A few months prior to September, 2017, Plaintiffs Curless and Popp met with Defendant Partin at the property and discussed purchasing the property. Defendant Partin misrepresented that the house on the property had just been remodeled and everything was brand new. He further misrepresented that hardwood floors would be installed and that the drywall, electric, and all of the plumbing both in the house and all the way to the street were new and in good working order. Plaintiffs Curless and Partin relied upon these representations to their detriment as described below.
53. As a result of the misrepresentations of Defendant Partin regarding the Property, Plaintiffs Curless and Popp and Partin agreed that they would purchase the property by an agreement Partin represented to be a land contract. As part of the agreement, Curless and Popp paid Thomas Partin Ten Thousand Dollars (\$10,000.00) as a down payment.
54. After Plaintiffs Curless and Popp took possession of the property, they experienced the following problems. The new hardwood floors separated as a result of the hardwood floors being installed incorrectly on top of carpet padding causing problems with the floors and ultimately causing the tongue and groove to snap off. A couple of months later, a bedroom ceiling caved in. Thereafter, a water pipe in the kitchen broke damaging the floors. The electric which was represented to be new failed to work in various sections of the house. Finally, on September 11, 2018, a sewer line behind the house connecting the house to the public sewage line malfunctioned causing sewage to flow back into the house. In addition, the drainage from the bathroom sinks was faulty causing water to drain onto the floors. An exhaust fan in the bathroom is not vented properly which helped create mildew. As a result of the sewage problem, the property was rendered uninhabitable for a period of time. As a result Defendants' conduct, Plaintiffs Curless and Popp incurred the cost of having to live elsewhere for approximately one month.
55. Plaintiffs Curless and Popp advised Defendant Partin of the damaged ceiling described above. Defendant Partin assured these Plaintiffs he would submit a property damage claim on the insurance coverage. Thereafter Partin advised Plaintiffs Curless and Popp that the insurance claim was denied and they were responsible for the cost of repairing the damage caused by, or otherwise the legal responsibility of Defendant Partin and his agents. At no time did Plaintiff Partin ever assume his obligations as a landlord and repair any of the problems with the property described herein. At no time did Defendant Partin ever provide Plaintiffs Curless and Popp with any written documentation of the homeowners' insurance policy paid by these Plaintiffs.

56. When the water pipe in the kitchen malfunctioned thereby damaging the floors, Defendant Partin advised Betty Curless that he would not submit an insurance claim on this and she and her mother were responsible for this damage. After these plaintiffs informed Defendant Partin of the problem with the electric not working in part of the house, Partin advised this was not his responsibility.
57. During the summer of 2018, a tree branch fell damaging the roof of the Property. Defendant did submit an insurance claim and allegedly received proceeds from the insurance carrier for this damage. However, Partin failed to repair the roof and Plaintiffs Curless and Popp incurred the cost of One Thousand Three Hundred Seventy-Five Dollars (\$1,375.00) to fix the roof.
58. Throughout this period of time, Defendant Partin was charging Plaintiffs for the cost of insurance on the Property and Defendant has unilaterally increased the monthly rental payment charged to these Plaintiffs by approximately \$25.00 per month without contractual authority to do so.
59. Defendant's actions described above have caused these Plaintiffs damages in amounts yet to be determined and in excess of \$25,000.00 including but not limited to: the costs and expenses plaintiffs has incurred in moving into the Property; the costs plaintiffs have incurred making repairs to the Property; the loss of use of the Property; the loss of value of the Property which these Plaintiffs thought they were purchasing; and the overcharging of these Plaintiffs amounts to which they did not agree to pay under the contract or otherwise.
60. At all relevant times Defendants breached their obligations owed to Plaintiffs and class members established by: 15 U.S.C. § 1639(a) by failing to provide Plaintiffs with the proper disclosure set forth in the statute and in 12 C.F.R. § 1026.32(c); 15 U.S.C. §§ 1639(h) and 1639c by failing to make a reasonable and good faith determination at or before consummation that the Plaintiffs will have a reasonable ability to repay the loan according to its terms; 15 U.S.C. § 1639(u) by issuing a high-cost mortgage without receiving written certification that Plaintiffs have obtained counseling on the advisability of the transaction from an appropriate counselor; 15 U.S.C. § 1639b by failing to assure that Plaintiffs were offered and received a residential mortgage loan on terms that reasonably reflect their ability to repay the loan and such terms are understandable and not unfair, deceptive, or abusive; 15 U.S.C. § 1639(k) by charging late fees that are in excess in an amount of 4% of the amount of the payment past due as well as the imposition of the late fees before the end of a fifteen day period beginning on the date the payment is due; 15 U.S.C. § 1639(h) by extending credit in the form of a high-risk mortgage to Plaintiffs without first obtaining a written appraisal of the property; and 15 U.S.C. § 1639d by failing to establish an escrow or impound account for the payment of taxes and hazard insurance and to maintain such account for the minimum duration required by this statute. At no time between June, 2013, and November, 2019, did any of these Defendants meet their obligations to these

Plaintiffs as a residential landlord nor did they provide these Plaintiffs with the casualty insurance policy which Plaintiffs had purchased through Defendants causing these Plaintiffs to incur repairs themselves on their home to make it fit inhabitable in the approximate amount of \$8,000.00 plus incur losses for damages to their home in the approximate amount of \$10,000.00.

**Named Plaintiff Shannon Watson**

61. The "Rent-to-Own" agreement which Plaintiff Shannon Watson executed on October 2, 2018, and which he was provided, did not contain signatures by the other parties. A copy of the last three pages of this "Rent-to-Own" agreement is attached hereto and incorporated herein as Exhibit 10 (the first page of the document is unlocated). It is unclear who is the actual "Owner/Landlord" of the real property which is the subject of this contract. On its face, the contract may not be enforceable and is ambiguous and vague. Shannon Watson has experienced numerous problems with the septic system on this residential real property which has not been corrected by any defendant. However, while no defendant has assumed the obligations of a residential landlord under Ohio Law, Shannon Watson has received eviction notices executed by Thomas Partin ordering Shannon Watson to vacate the property on the grounds of non payment of water bills. Copies of these documents entitled "Notices to Leave the Premises" are attached hereto and incorporated herein as Exhibits 11, 12 and 13.

**Named Plaintiff Tyrea Bragg**

62. After Plaintiff Tyrea Bragg took possession of the residential property located at 520 East 7<sup>th</sup> Street, Manchester, Ohio, she has experienced numerous problems with the sewage discharge line on this property. As a result of either a non-functioning or nonexistent sewage line, Shannon Watson has incurred and continues to incur substantial damages as a result of her house being uninhabitable. Similar to the circumstances of Defendants' practices, this plaintiff's "Rent-to-Own" agreement is unclear as to the identity of the actual property owner and party to the contract. The contract lists Defendant Thomas Partin as the "Owner/Landlord" with payments to be made to an individual named Denver Dunn, and the contract is signed by Steven Partin as "Manager of Thomas Partin." Although no defendant has assumed the statutory obligations of a residential landlord with respect to this residential property, Tyrea Bragg has received a "Notice to Leave the Premises" on or about January 20, 2021, executed and served by Thomas Partin in which it is claimed that Tyrea Bragg failed to pay rent and is charged a late fee of fifty dollars. A copy of this notice to leave the premises is attached hereto and incorporated herein as Exhibit 15. At and prior to the time Tyrea Bragg executed the Rent-to-Own contract on October 25, 2019, defendants were aware of, or should have been aware of, the sewage line

problems associated with this residential property. Defendants failed to disclose these facts to plaintiff. Similar to Defendants' practices with respect to the other plaintiffs and members of the class, Tyrea Bragg paid a down payment of \$5,000.00 and is paying the balance of the \$44,900.00 purchase price under a 360 month payment obligation with the interest commuted at the rate of 12%.

## **V. CLASS ALLEGATIONS**

63. Plaintiffs bring this action on behalf of themselves and all others similarly situated individuals who entered into a "Rent to Own" or "Lease With Option to Buy" agreement with any Defendant to lease and/or purchase residential real property in Ohio; or entered into any other form of agreement in which any such class member is obligated to make periodic payments to any Defendant for the rent and/or purchase of residential real property in Ohio; or any of the above described contracts administered by Defendant Heritage in Ohio. The class is limited to those individuals described above who are or were making payments to any of the Defendants at any time since August 11, 2010, to the present.
64. Plaintiffs and all class members seek declaratory and injunctive relief and damages and all other relief to which they may be entitled, including punitive damages and attorney fees.
65. The number of class members is so numerous that joinder of all members is impracticable. Plaintiffs believe that the class will consist of 200 or more members. The number and identity of class members easily can be obtained through the records of the Defendants.
66. The claims of Plaintiffs are typical of the claims of the class that they seek to represent. The Defendants have treated all of the class members the same and each member is entitled to the same form of relief.
67. The named Plaintiffs will fairly and adequately protect the interests of the members of the class. Plaintiffs' attorneys are experienced in class action litigation and will diligently and professionally prosecute the litigation.

### **COMMON QUESTIONS EXIST FOR THE CLASS**

68. Common questions of law and fact exist as to Plaintiffs and all members of the class. The common issues include but are not limited to the following.
  - a. Whether Defendants are subject to and failed to comply with the requirements of the Ohio Land Installment Contract laws set forth in R.C. 5313.01. *et seq.*, in entering into and carrying out

the above described agreements (hereinafter "agreements") with Plaintiffs and the class members.

- b. Whether Defendants are subject to and failed to comply with the requirements imposed upon landlords under the Ohio Landlord-Tenant laws, R.C. 5321.01, *et seq.*, including R.C. 5321.04, under these "Rent-to-Own" agreements, and whether such agreements are violate R.C. 5321.13, by limiting Defendants' statutory obligations as a landlord, and whether these agreements are unconscionable as defined by R.C. 5321.14.
- c. Whether Defendants' actions and omissions are in violation of Plaintiffs' and class members' rights under the Ohio Consumer Sales Practices Act.
- d. Whether Defendants have committed fraud.
- e. Whether Defendants are in breach of contract.
- f. Whether Defendants have acted as a "mortgage lender" or "mortgage broker" without first having obtained a certificate of registration from the Ohio Superintendent of Financial Institutions in violation of R.C. 1322.07, and whether Defendants are in violation of R.C. 1322.40 by engaging in the following practices: making false or misleading statements of a material fact, omissions of statements required by state or federal law, or false promises regarding a material fact through advertising or other means, or engaging in a continued course of misrepresentation; engaging in conduct that constitutes improper, fraudulent, or dishonest dealings; knowingly making, proposing, or soliciting fraudulent, false, or misleading statements on any mortgage loan document or on any document related to a mortgage loan, or real estate settlement or closing document; knowingly instructing, soliciting, proposing, or otherwise causing a buyer to sign in blank a mortgage related document; and engaging in any unfair, deceptive, or unconscionable act or practice prohibited under sections 1345.01 to 1345.13 of the Revised Code; and whether, as a result of these violations, there is a common question applicable to Plaintiffs and all class members whether they are entitled to damages plus reasonable attorney fees and court costs pursuant to R.C. 1322.52.
- g. Whether Defendants are in violation of R.C. 1322.45 by acting as a person required to be registered or licensed under R.C. Chapter 1322 and by failing to act with reasonable skill, care,

and diligence in their transactions with Plaintiffs and the class members thereby entitling Plaintiffs and class members the right to recover all of their damages plus reasonable attorney fees and court costs.

- h. Whether the agreements described above are unconscionable.
  - i. Whether defendants are liable to plaintiffs and the members of the class because defendants, as nonbank lenders, have engaged in transactions with plaintiffs that are not in good faith or fair dealings, or that operate as fraud upon plaintiffs and the members of the class under R.C. 1349.41.
  - j. Whether Defendants are “creditors” as defined by 15 U.S.C. § 1602(g) and Plaintiffs and members of the class are “consumers” as defined by 15 U.S.C. § 1602(i) and whether the above described agreements between the parties constitute “residential mortgage transactions,” “high-cost mortgages,” and a “residential mortgage loans,” as those terms are defined by 15 U.S.C. §1602(x), (bb), and (dd)(5), respectively.
  - k. Whether Defendants violated Plaintiffs and class members’ rights under 15 U.S.C. § 1639(a), (h), (k) and (u); 15 U.S.C. § 1639b; 15 U.S.C. § 1639c; 15 U.S.C. § 1639d; 15 U.S.C. § 1639h; and 12 C.F.R. §1026.32(c).
69. Class certification pursuant to Rule 23(B)(1)(a) and (b) is appropriate, because the prosecution of hundreds of separate claims would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class; and adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.
70. Class certification is appropriate pursuant to Rule 23(B)(2), because the parties opposing the class have acted or refused to act on grounds that apply generally to the class, so that final injunctive or corresponding declaratory relief is appropriate respecting the class as a whole.
71. A class action is superior to all other available methods to adjudicate this litigation. Common issues predominate over individual issues. The size of the class renders joinder impracticable. The failure to certify the class will prevent Ohio residents who have entered into these agreements with Defendants from pursuing their claims, because of the expense of individual litigation, which would be burdensome, time consuming and repetitive. The

benefits of class action certification provide: unitary adjudication; economies of scale; and access to the courts for hundreds of residents. Class certification pursuant to Rule 23(B)(3), Ohio Rules of Civil Procedure is appropriate.

## **VI. CAUSES OF ACTION**

### **First Cause of Action Violation of Ohio Land Installment Contract Law**

72. The allegations in all of the above paragraphs are incorporated by reference herein.
73. The agreements Defendants have made with Plaintiffs and members of the class that are described above are subject to the provisions of R.C. 5313.01, et seq. As such, as defined by R.C. 5313.01, Plaintiffs and the class are Vendees, and Defendants are Vendors.
74. Defendants failed to comply with almost all of the minimum statutory requirements set forth in R.C. 5313.02 including but not limited to: Defendants' failure to provide Plaintiffs and their class with: a signed contract; the full names and current mailing addresses of all parties to the agreements; a legal description of the property to be conveyed; the amount of the down payment; the interest rate on the unpaid balance and the method of computing the rate; a statement requiring Defendants to deliver a general warranty deed on completion of the contract; a provision that Defendants will cause the agreements to be recorded; and Defendants' failure to record these agreements with the county recorder.
75. Contrary to the provisions of this Ohio Land Installment Contract law, in the land installment agreements described above, Defendants specifically and illegally retain the right to evict any Plaintiff or member of the class in the event that such vendee is ten days in default of any obligation to pay under the agreement, including: the monthly payments often designated as "rent" payments; the obligation to pay property taxes; insurance payments; or even utility payments processed by Defendants. Additionally, Defendants have failed to adhere to the forfeiture provisions required by R.C. 5313.05 and when applicable the foreclosure provisions required by R.C. 5313.07. As a consequence, many members of Plaintiffs' class have suffered damages by having been dispossessed of the residential real property subject to the agreements unlawfully. Plaintiffs and the class members are entitled to declaratory and injunctive relief from this Court declaring these practices in violation of the provisions of R.C. Chapter 5313 and enjoining Defendants from receiving and retaining payments from Plaintiffs and the class members under these agreements. Plaintiffs and the class members are entitled to rescission of the agreements plus recovery of all other damages they have incurred.

### **Second Cause of Action Violation of Ohio Landlord Tenant Law**

76. The allegations in all of the above paragraphs are incorporated by reference herein.
77. The agreements between Defendants and Plaintiffs and members of the class are subject to Ohio's Landlord Tenant Act, to wit: R.C. 5321.01, et seq., for the following reasons: the periodic payments due to Defendants are referred to as "rent;" the agreements provide Defendants with the right to evict for non-payment of the financial obligations imposed upon Plaintiffs and members of the class; and the agreements often refer to Defendants as "Landlord" and Plaintiffs and members of their class as "Tenant."
78. Defendants, acting as landlords through the specific language in the agreements, repeatedly failed to meet their statutory obligations set forth in R.C. 5321.04. When any defects existed in the premises rented by Plaintiffs and the class members under the agreements, Defendants maintain the Plaintiffs and the class, as vendees, are obligated to correct such defects rather than Defendants meeting their obligations under R.C. 5321.04(A)(1), (2), (4), and (6). As a result, Defendants' agreements violate R.C. 5321.13.
79. The agreements are unconscionable as defined by and prohibited by R.C. 5321.14, for the reasons set forth above, and because the agreements, while creating the illusion that the Plaintiffs and the class members are actually purchasing real property, require Plaintiffs and the class members to make a down payment, pay all property taxes, and pay insurance premiums on the property. As a result thereof, Plaintiffs and the class members are entitled to recover all damages suffered as a result Defendants' violation of the Ohio Landlord Tenant Act, including but not limited to recovery of their down payments; property tax payments; and insurance payments, as well as all other relief which would be necessary and appropriate.

### **Third Cause of Action – Violation of Chapter 1345**

80. The allegations in all of the above paragraphs are incorporated by reference herein.
81. Defendants' agreements with Plaintiffs and the class members are consumer transactions as defined by R.C. 1345.01 in which Defendants purport to sell to Plaintiffs and class members a contract of insurance.
82. At no time are any of the Defendants licensed by the State of Ohio to sell homeowners insurance or administer property damage claims under an insurance contract.

83. While Defendants, under the agreements described above, claim to be selling homeowners insurance to Plaintiffs and class members, at no time have Defendants ever provided an actual insurance policy to Plaintiffs and the class members nor any written explanation of coverage. Plaintiffs and class members are not even provided the identity of the actual insurer, nor are they provided any explanation of what insurance coverage they are purchasing. In the instances where Plaintiffs and class members have incurred damage to their homes, they must first present their loss claims to Defendants who then decide whether the loss is covered under the so-called insurance policy. In cases, such as the Waldmans' claims described above, Plaintiffs and class members are given no written explanation of why coverage of a claim is denied.
84. Defendants' practice of charging and collecting insurance premiums without providing any actual insurance policy is both a deceptive and unconscionable practice as defined by R.C. 1345.02 and 1345.03. As a result thereof, Plaintiffs and the class members are entitled to rescission of the agreements with Defendants, plus their damages and attorney fees as a result of Defendants' knowing violations of the Ohio Consumer Sales Practices Act.

#### **Fourth Cause of Action – Fraud**

85. The allegations in all of the above paragraphs are incorporated by reference herein.
86. In order to induce Plaintiffs and the class members to enter into the "Rent-to-Own" agreements, Defendants and their agents and employees, knowingly made false statements to Plaintiffs and the class members about the conditions of the subject real estate; the work which Defendants would perform on the real estate; the work which had been performed on the real estate; allocation of property tax and insurance payments and about all aspects of the Rent-to-Own agreements including each party's respective obligations. Plaintiffs and the class members relied upon these false statements, and as a result thereof suffered damages as described in this Complaint. Defendants are liable to Plaintiffs and the class members for all actual damages incurred as a result of Defendants' actions of fraud, plus punitive damages as result of Defendants' reckless and malicious conduct, and reasonable attorney fees.

#### **Fifth Cause of Action – Violation of R. C. Chapter 1322**

87. The allegations in all of the above paragraphs are incorporated by reference herein.
88. Defendants' actions described above are those of both a mortgage lender and mortgage broker as defined by R.C. 1322.01.

89. Defendants have acted as mortgage lenders and mortgage brokers without having first obtained a certificate of registration in violation of R.C. 1322.07. Defendants have violated R.C. 1322.40 by making false or misleading statements of a material fact, as well as by omitting statements required by both federal and state laws, as well as engaging in conduct described above that constitutes improper, fraudulent or dishonest dealings. As a result, Plaintiffs and the class members, as buyers injured by Defendants' unlawful actions described herein, are entitled to recover all of their damages each has suffered, plus punitive damages and attorney fees as provided in R.C. 1322.52. In addition, Defendants conduct described above violated R.C. 1322.45 by failing to safeguard and account for any money handled for the Plaintiffs and class members as buyers; failing to act with reasonable skill, care and diligence; by failing to act in good faith and with fair dealing in the transactions with Plaintiffs and class members; and by failing to make reasonable efforts to secure residential mortgage loans with rates, charges, and repayment terms that are advantageous to the Plaintiffs and class members as buyers, thereby making Defendants liable to Plaintiffs and the class members under R.C. 1322.45(D) for all damages set forth in that provision, including punitive damages.

**Sixth Cause of Action – Violation of R.C. 1345.031**

90. The allegations in all of the above paragraphs are incorporated by reference herein.
91. Defendants' actions described above are in violation of R.C. 1345.031 because these actions constitute unconscionable acts or practices concerning real estate mortgages and include but are not limited to the following:
- (a) engaging in a pattern or practice of providing consumer transactions to consumers based predominately on Defendants' realization of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay the loan; and
  - (b) entering into the consumer transaction knowing there was no reasonable probability of payment of the obligation by the consumer.
92. As a result of these statutory violations, Defendants are liable to Plaintiffs and the class members for all damages as set forth in R.C. 1345.09, plus attorney fees.

**Seventh Cause of Action – Violation of 15 U.S.C. §§ 1639 and 1640**

93. The allegations in all of the above paragraphs are incorporated by reference herein.

94. The agreements described in this Complaint are installment sales contracts (“land contracts”) wherein Plaintiffs and the class members are purchasing real estate by paying installment payments without executing a note or mortgage. Land contracts and equitable mortgages are residential mortgage transactions that are subject to the federal Truth-in-Lending Act (15 U.S.C. § 1601 *et seq.* hereinafter “TILA”), and the federal Home Ownership Equity Protection Act (15 U.S.C. § 1639 *et seq.* hereinafter “HOEPA”).
95. Defendants are “creditors” as defined in 15 U.S.C. § 1602(g). Under this same section, Defendants and Plaintiffs and the class members are each individually a “person” as defined by 15 U.S.C. § 1602(e). Defendants extended “credit” to Plaintiffs and the class members as defined by 15 U.S.C. § 1602(f) in a “credit sale” as defined by 15 U.S.C. § 1602(h) with Plaintiffs and the class members being “consumers” as defined by 15 U.S.C. § 1602(i). Defendants and Plaintiffs and the class members engaged in “consumer credit,” “residential mortgage,” and “high-cost” mortgage transactions as those terms are defined in 15 U.S.C. §§ 1602(i), 1602(x) and 1602(bb). Defendants are “mortgage originators” as defined by 15 U.S.C. § 1602(dd)(2).
96. Defendants are engaged in the practice of using high-cost mortgages that fall within the meaning of 12 C.F.R. § 1026.32(a)(1) of the HOEPA to sell their homes. These high-cost mortgages involve any consumer credit transaction that is secured by the consumer's principal dwelling in which there is a first mortgage and the Annual Percentage Rate (“APR”) is more than 6.50 percentage points higher than the average prime offer rate.
97. Defendants have violated 15 U.S.C. § 1639(a) by failing to provide Plaintiffs and the class members the proper disclosures set forth in the statute and in 12 C.F.R. § 1026.32(c).
98. Defendants have initiated these transactions with Plaintiffs and the class members without making a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms in violation of 15 U.S.C. §§ 1639(h) and 1639c. This has resulted in Plaintiffs and the class members having historically high levels of delinquency and default.
99. Defendants have extended the high-cost mortgages at issue without receiving written certification that the consumer has obtained counseling on the advisability of the transaction from an appropriate counselor, in violation of 15 U.S.C. § 1639(u).
100. Defendants are in violation of 15 U.S.C. § 1639b by failing to assure that the consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and

not unfair, deceptive or abusive. The terms of these transactions are deceptive, have high interest rates, and contain predatory characteristics.

101. Defendants are in violation of 15 U.S.C. § 1639(k) by charging late fees that are in an amount in excess of 4% of the amount of the payment past due, as well as other provisions set forth therein including the imposition of the late fee before the end of the 15 day period beginning on the date the payment is due.
102. Defendants are in violation of 15 U.S.C. § 1639h by extending credit in the form of a high-risk mortgage to any consumer without first obtaining a written appraisal of the property. As a result, Plaintiffs and the class members are each entitled to \$2,000.00 from Defendants pursuant to 15 U.S.C. § 1639h(e), in addition to any other remedies available in equity or at law.
103. Defendants are in violation of 15 U.S.C. § 1639d by failing to establish an escrow or impound account for the payment of taxes and hazard insurance and to maintain such account for the minimum duration required by 15 U.S.C. § 1639d.
104. Plaintiffs and members of class have been injured by Defendants' scheme as described herein and failure to provide the disclosures required by the TILA/HOEPA, and the above cited violations. Defendants, as creditors who failed to comply with any requirement imposed under Title 15, Chapter 41, Subchapter I, Part B with respect to any person are liable to such person (or class) (Plaintiffs and the class members) for all damages permitted by 15 U.S.C. § 1640 in addition to reasonable attorney fees.

#### **Eighth Cause of Action – Breach of Contract**

105. The allegations in all of the above paragraphs are incorporated by reference herein.
106. Defendants' conduct as described above violated their obligations to Plaintiffs and class members under the Rent to Own and Lease with Option to Purchase Agreements.
107. Defendants are liable to plaintiffs and the class members as a result of Defendants' Breach of Contract.

#### **Ninth Cause of Action – Violations of R.C. 1349.41**

108. The allegations in all of the above paragraphs are incorporated by reference herein.
109. Plaintiffs and the members of the class are consumers to whom credit is offered or extended primarily for personal, family, or household purposes as set forth in R. C. 1349.41(A)(1).

110. Defendants have acted in dealings with plaintiffs and class members as “lenders” as defined in R.C. 1349.41(A)(2).
111. Defendants, in their transactions, practices and course of dealings with Plaintiffs and the members of the class, have acted in a manner in violation of R.C. 1349.41(B). These transactions and practices are not in good faith or did not constitute fair dealing, or operate as a fraud upon Plaintiffs and members of the class with the attempted or actual making, purchase, or sale of any mortgage loan.
112. Defendants are liable to plaintiffs and the members of the class in damages of not less than all compensation paid directly or indirectly to defendants, plus reasonable attorney fees as provided by R.C. 1349.41(C), in amounts in excess of Twenty-Five thousand dollars (\$25,000.00)

Wherefore; Plaintiffs request that this Court grant the following relief:

1. Certify this action as a class action.
2. Issue declaratory relief against Defendants declaring that Defendants have failed to assume their obligations to the Plaintiffs and class members as a residential landlord pursuant to the provisions of R.C. 5321.04; and declare the rent to own contracts or other similarly worded contracts between the parties are in violation of R.C. 5321.13 and are unconscionable pursuant to the provisions of R.C. 5321.14; and grant a permanent injunction against Defendants enjoining Defendants from collecting what they call rent payments from Plaintiffs and the class members without assuming the obligations of a landlord.
3. Grant declaratory relief against Defendants declaring that Defendants are in violation of the statutory requirements set forth in R.C. 5313.02 and all other statutory provisions protecting the rights of vendees under the Ohio Land Installment Contract Laws; and grant a permanent injunction against Defendants enjoining Defendants from collecting monthly payments from Plaintiffs and the class members without first assuming all of Defendants’ statutory obligations under Ohio’s Land Installment Contact laws, including the obligation to record all contracts with Plaintiffs and the class members with the appropriate county recorder offices.
4. Award each Plaintiff and each member of the class compensatory damages in an amount equal to all damages sustained by each such Plaintiff and class member as described above in amounts in excess of Twenty-Five thousand Dollars (\$25,000.00);
5. Issue declaratory and injunctive relief against Defendants finding that Defendants have acted as both a mortgage lender and mortgage broker as

defined by R.C. 1322.01 and Defendants have so acted without first obtaining a proper certificate of registration in violation of R.C. 1322.07 and finding that Defendants have violated R.C. 1322.40 by making false and misleading statements of a material fact as well as omissions of statements required by both federal and state laws, as well engaging in conduct that constitutes improper, fraudulent or dishonest dealings.

6. Issue declaratory and injunctive relief against Defendants declaring that Defendants' actions constitute unconscionable acts or practices concerning real estate mortgages in violation of R.C. 1345.031; and, as a result, award Plaintiffs and the class members all damages set forth in R.C. 1345.09, plus reasonable attorney fees.
7. Issue declaratory and injunctive relief against Defendants declaring that Defendants practice of charging and collecting insurance premiums without providing any actual insurance policy constitutes both a deceptive and unconscionable practice as defined by R.C. 1345.02 and 1345.03; and, as a result, award Plaintiffs and the class members all damages set forth in R.C. 1345.09, in amounts in excess of Twenty-Five Thousand dollars (\$25,000.00) plus reasonable attorney fees.
8. Award Plaintiffs and the class members damages as set forth in 15 U.S.C. § 1640, plus reasonable attorney fees against Defendants for all violations of federal law described in the Seventh Cause of Action.
9. Award judgment against Defendants in favor of Plaintiffs and the class members for all damages in amounts in excess of Twenty-Five Thousand Dollars (\$25,000.00) sustained as a result of the damages incurred by Plaintiffs and class members as a proximate cause of Defendants' and their agents' acts of fraud in connection with the transactions with Plaintiffs as described in the Fifth Cause of Action.
10. Award Plaintiffs and the class members judgments against Defendants for all damages Plaintiffs and the class members sustained as a result of Defendants' violation of their statutory obligations and breach of contract set forth above in amounts in excess of Twenty-Five thousand Dollars (\$25,000.00); award Plaintiffs and the class members punitive damages as a result of Defendants' wanton and willful and reckless disregard for the rights of Plaintiffs and the class members as described above; and award Plaintiffs their reasonable attorney fees and costs herein.
11. Award Plaintiffs and the class members judgments against Defendants for all damages in amounts in excess of Twenty-Five Thousand Dollars (\$25,000.00) plus reasonable attorney fees pursuant to R.C. 1349.41(C) as a result of Defendants' failure to comply with R.C. 1349.41(B).

12. Award Plaintiffs all other relief to which they may be entitled herein which this Court deems reasonable, appropriate, and necessary.



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OWNERS will continue to cover the dwelling with homeowner's insurance. TENANTS agree to reimburse OWNERS for the cost of this insurance. ***TENANTS understand that this insurance does not cover personal contents or liability.***

**(E) Occupancy and Use of Premises**

TENANTS will occupy and use the premises, in a careful, safe, proper, and lawful manner. Any remodeling of the home that changes its current layout or structure, must be approved by the Owner. Repairs due to normal everyday wear and tear do not need approval.

**(F) Option to Buy**

Tenants may purchase the property when the balance of **\$78,957** is paid in full. If the monthly lease payments are not made monthly according to the agreement herein, the lease may be terminated according to law for nonpayment of the lease, or any other financial obligation, but not limited to taxes, insurance, utilities, etc.

If the lease remains in effect throughout the period without default, the deed shall be executed within 30 days of the end of the lease term and the Buyers shall become the record owner by deed. Landlords/Sellers make no assurance of title related to title insurance and it is customary for Buyers to obtain their own title search for defects of title and title insurance if so desired.

Buyers shall not pay a penalty for pre-payment of the lease.

**(G) Assignment**

Neither this nor the options granted in paragraph (F) are assignable by Tenants without Owners express written consent.

**(H) Termination**

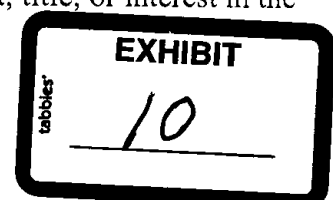
Owners may terminate this lease without notice or on such as may be required by law if Tenants are in default for: nonpayment of rent for more than 10 days, abandon the premises, in violation of any material condition of the lease or nonpayment of any other financial obligations including, but not limited to, utilities, insurance and property taxes.

**(I) Late Payment**

Tenants will be subject to a late fee of **\$50.00** for any financial obligation that is not received within 7 days of due date. Furthermore, there will be an additional charge of **\$1.00 per day** for each day over 7 days that the financial obligation is not cured.

**(J) Lease Binding on Parties and Successors**

This lease and its provisions shall inure to the benefit of and bind the heirs, personal representatives, successors, and assigns of the parties, except that no assignment of all or any part of this lease by Tenants in violation of its terms shall vest any right, title, or interest in the purported assigns.



TENANTS will indemnify and save OWNERS harmless from liability for claims for personal injury or property damage brought by third persons, and arising out of acts or omissions by TENANTS in their use or occupancy of the premises.

OWNERS will continue to cover the dwelling with homeowner's insurance. TENANTS agree to reimburse OWNERS for the cost of this insurance. ***TENANTS understand that this insurance does not cover personal contents or liability.***

**(E) Occupancy and Use of Premises**

TENANTS will occupy and use the premises, in a careful, safe, proper, and lawful manner. Any remodeling of the home that changes its current layout or structure, must be approved by the Owner. Repairs due to normal everyday wear and tear do not need approval.

**(F) Option to Buy**

Tenants may purchase the property when the balance of **\$18,600** is paid in full. If the monthly lease payments are not made monthly according to the agreement herein, the lease may be terminated according to law for nonpayment of the lease, or any other financial obligation, but not limited to taxes, insurance, utilities, etc.

If the lease remains in effect throughout the period without default, the deed shall be executed within 30 days of the end of the lease term and the Buyers shall become the record owner by deed. Landlords/Sellers make no assurance of title related to title insurance and it is customary for Buyers to obtain their own title search for defects of title and title insurance if so desired.

Buyers shall not pay a penalty for pre-payment of the lease.

**(G) Assignment**

Neither this nor the options granted in paragraph (F) are assignable by Tenants without Owners express written consent.

**(H) Termination**

Owners may terminate this lease without notice or on such as may be required by law if Tenants are in default for: nonpayment of rent for more than 10 days, abandon the premises, in violation of any material condition of the lease or nonpayment of any other financial obligations including, but not limited to, utilities, insurance and property taxes.

**(I) Late Payment**

Tenants will be subject to a late fee of **\$50.00** for any financial obligation that is not received within 7 days of due date. Furthermore, there will be an additional charge of **\$1.00 per day** for each day over 7 days that the financial obligation is not cured.

**(J) Lease Binding on Parties and Successors**

This lease and its provisions shall inure to the benefit of and bind the heirs, personal

representatives, successors, and assigns of the parties, except that no assignment of all or any part of this lease by Tenants in violation of its terms shall vest any right, title, or interest in the purported assigns.

**(K) Final Agreement**

The terms of this lease with option to buy supersede all prior agreements of the parties and the parties agree there are no other agreements between them except those expressly stated herein.

**(L) Water Bills**

There is a \$5/Month Convenience Fee for Water Bill Processing. The water bill will be mailed to our offices and then re-mailed to the customer.

**WITNESS** as to the following signatures:

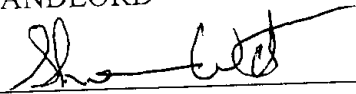
\_\_\_\_\_  
DATE

\_\_\_\_\_  
ETC CUSTODIAN THOMAS PARTIN IRA  
LANDLORD

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ETC CUSTODIAN NATHAN SKAGGS IRA  
LANDLORD

10-2-2018

  
\_\_\_\_\_  
SHANNON WATSON  
Tenant

DATE

**NOTICE TO LEAVE THE PREMISES**

(FOR RESIDENTIAL PROPERTY ONLY)

To Shannon Watson Tenant:

You will please notice that I want you on or before 12/12, 20 19  
to leave the premises you now occupy, and which you have rented of Thomas Patrick,  
situated and described as follows:

13045 Leven Cumberland Rd

In Mt Orab, County of Brown and State of OH

Grounds: Non-Payment Delinquent Order # 184.29

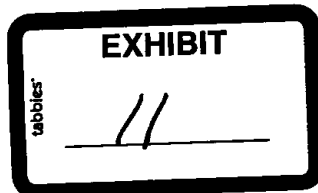
YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

Thomas Patrick Landlord

12/12, 20 19

Landlord's Address 720 E Main St

West Union, OH



**NOTICE TO LEAVE THE PREMISES**

**(FOR RESIDENTIAL PROPERTY ONLY)**

To Shannon Watson Tenant:

You will please notice that I want you on or before March 15, 2019

to leave the premises you now occupy, and which you have rented of Thomas Partin

situated and described as follows:

13045 Lower Cumberland Road

in Mt. Orab, County of Brown and State of Ohio

Grounds: Non-Payment

Delinquent Water Bill \$ <sup>V.P.</sup> ~~###~~ 131.<sup>89</sup>

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

Thomas Partin Landlord

March 11, 2019

Landlord's Address 720 E. Main Street

West Union, OH. 457093

EXHIBIT  
12

NOTICE TO LEAVE THE PREMISES  
(For Residential Property Only)

To Shannon Watson Tenant:  
You will please notice that I/we want you on or before 3/23, 2022

to leave the premises you now occupy, and which you have rented of Melissa Partin  
(landlord)

situated and described as follows:

13045 Lower Cumberland Rd  
(eviction address)

in Mt Orab, Brown, Ohio.  
(City) (County)

(full address and suite number of rental)

Grounds:  
Non - Payment Rent + Late Fees January 2022 -> March 2022:  
\$2835.55

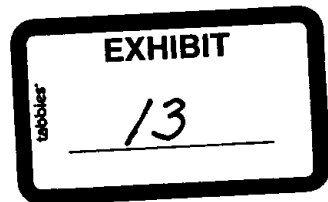
Your compliance with this NOTICE within 5 days after its service will prevent any further  
eviction action against you. (number of days)

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN  
EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT  
REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS  
RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

Yours respectfully,  
Melissa Partin, Landlord

Landlord's Address 720 E. Main St  
West Union, OH 45693

Date 3-18-2022



## RENT TO OWN

This rental agreement is between , **THOMAS PARTIN (Steven Partin, Manager)** at 720 East Main Street, West Union, OH 45693 **Owner/Landlord.** and **TYREA MILES Purchaser /Tenants.**

### **(A) Premises; Term**

Owner shall rent to Tenant, for the term beginning on the **1st day of NOVEMBER, 2019** and ending on the **1st day of NOVEMBER, 2049.** the following real property described as:

**520 E. 7TH STREET  
MANCHESTER, OH**

### **(B) Rent Payments**

The rent payment for the term shall be **\$438.59** due monthly. **\$379.98** for monthly Rent To Own, **\$29.77** for monthly taxes, **\$23.84** for monthly insurance, and **\$5.00** for Monthly water bill processing fee. Monthly tax and/or monthly insurance are subject to change based on tax or premium increase. Payments shall be made payable to **DENVER DUNN at 720 East Main Street, West Union, OH 45693** or such other address or location as lessor may designate in a written notice to lessee. Payments due on the **1st** day of each month.

### **(C) Maintenance of Premises; Taxes**

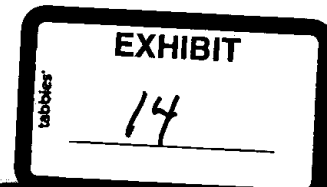
TENANTS will keep the premises and grounds clean, and at their expense will maintain the premises in good repair condition.

TENANTS understand that property taxes and all utilities on the property are their responsibility from the date of signing of this contract.

### **(D) Indemnity; Insurance**

If the premises are rendered untenantable by fire or other casualty, the insurance proceeds will be applied to repairing and replacing the property destroyed so as to make the premises habitable, or the insurance proceeds will be applied and paid toward the balance/option to buy purchase price, according to the Tenants choice. If the premises are rendered temporarily untenantable by fire or other casualty, the Buyers may choose to remain in the premises and continue to pay rent while repairs are being made. If the Tenants choose to vacate the premises, they will pay no further rent following the damage or destruction and Landlord will refund to Tenants the unearned portion of any monthly rent paid in advance prorated to the date of damage or destruction. If the premises or any other part of the building (s) is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenants' agents, invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

TENANTS will indemnify and save OWNERS harmless from liability for claims for personal injury or property damage brought by third persons, and arising out of acts or omissions by TENANTS in their use or occupancy of the premises.



OWNERS will continue to cover the dwelling with homeowners insurance. TENANTS agree to reimburse OWNERS for the cost of this insurance. **TENANTS understand that this insurance does not cover personal contents or liability.**

**(E) Occupancy and Use of Premises**

TENANTS will occupy and use the premises, in a careful, safe, proper, and lawful manner. Any remodeling of the home that changes its current layout or structure, must be approved by the Owner. Repairs due to normal everyday wear and tear do not need approval.

**(F) Option to Buy**

Tenants may purchase the property for the predetermined Purchase amount listed in the Payment Schedule provided at closing. If the monthly Rent To Own payments are not made monthly according to the agreement herein, the agreement may be terminated according to law for nonpayment of Rent, or any other financial obligation, but not limited to taxes, insurance, utilities, etc.

If the contract remains in effect throughout the period without default, the deed shall be executed within 30 days of the end of the Rent To Own term and the Buyers shall become the recorded owner by deed. Landlords/Sellers make no assurance of title related to title insurance and it is customary for Buyers to obtain their own title search for defects of title and title insurance if so desired.

Buyer shall not pay a penalty for purchasing the property before the end of the agreement term.

**(G) Assignment**

Neither this nor the options granted in paragraph (F) are assignable by Tenants without Owner's express written consent.

**(H) Termination**

Owners may terminate this agreement without notice or on such as may be required by law if Tenants are in default for: nonpayment of rent for more than 10 days, abandon the premises, in violation of any material condition of the agreement or nonpayment of any other financial obligations including, but not limited to, utilities, insurance and property taxes.

**(I) Late Payment**

Tenants will be subject to a late fee of **\$50.00** for any financial obligation that is not received within 7 days of the due date. Furthermore, there will be an additional charge of **\$1.00** per day for each day over 7 days that the financial obligation is not cured.

**(J) Agreement Binding on the Parties and Successors**

This agreement and its provisions shall inure to the benefit of and bind the heirs, personal Representatives, successors, and assigns of the parties, except that no assignment of all or any part of this Agreement by Tenants in violation of its terms shall vest any right, title, or interest in the purported assigns.

**(K) Final Agreement**

The terms of this Rent To Own supersedes all prior agreements of the parties and the parties agree there are no other agreements between them except those expressly stated herein.

**(L) Water Bills**

There is a \$5/Month Convenience Fee for Water Bill Processing. The water bill will be mailed to our offices and then re-mailed to the customer. Past due water bills for any amount will be grounds for eviction.


WITNESS as to the following signatures:

10/25/19  
DATE



STEVEN PARTIN, Manager for  
THOMAS PARTIN  
Landlord

10/25/19  
DATE



TYREA MILES  
Tenant

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Tenant

TO THE HONORABLE  
MEMBERS OF THE  
COMMISSION ON THE STATUS OF WOMEN  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.

RE: *Equal Pay Act of 1963*  
*and*  
*Equal Employment Opportunity Act of 1964*

DATE: *April 15, 1964*

BY: *[Signature]*

EXHIBIT  
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