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

TINA MARCK, et al.	:	CASE NO. 20200399
Plaintiffs,	:	
	:	
v.	:	<u>PLAINTIFFS' MOTION FOR</u>
	:	<u>CLASS CERTIFICATION</u>
THOMAS PARTIN, et al.	:	
Defendants.	:	JUDGE SCOTT GUSWEILER
	:	

Pursuant to the provisions of Rule, 23, Ohio R. Civ. Proc. (hereinafter "Rule 23"), plaintiffs move this Court to issue an order certifying this action as a class action.

Plaintiffs state that the prerequisites under Rule 23(A) are met because: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

The prerequisites under Rule 23(B)(2) and (3) are met because:

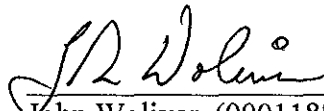
(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the questions of law or fact common the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Plaintiffs request that this Court certify the class of plaintiffs as being the following: the class shall consist of all persons who have entered into a "Rent-to-Own" or "Lease With Option to Buy" agreement with any defendant for the purpose of renting and/or purchasing residential

real property in the State of Ohio, or have entered into any other similar form of an 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. These contracts are best described as seller financed residential mortgage agreements in which the sellers retain the right of a residential landlord to evict for non-payment. 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.

Set forth below and incorporated herein is plaintiffs' memorandum in support of this motion.



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MEMORANDUM

I. FACTS

The facts relevant to a Rule 23 analysis are as follows. All plaintiffs and all members of the class defined in this litigation have entered into contracts with one or more of the defendants which are called either "Lease With Option to Buy" or "Rent-to-Own." As described below, these two contracts, while having different titles, contain the same provisions.¹ Defendants' practices and methods with respect to these contracts are seller financed mortgage agreements in which the sellers (i.e. the defendants) retain the right of a residential landlord to evict for non-payment.² The contracts all contain the following key elements.

1. The contracts provide for the rent and/or purchase³ of residential real estate. Not included are commercial contracts or contracts involving only vacant land.
2. Defendants charge an initial down payment by the renter/purchaser of usually 7% of the overall purchase price.
3. The contracts provide for payment of property taxes and insurance by the renter/purchaser.
4. The contracts provide monthly payments to be made by the renter/purchaser of the balance of the purchase amount amortized over usually 30 years typically at an interest rate of 12%.⁴
5. The contracts provide that the renter/purchaser assumes responsibility for payment of all utilities and for the repair and maintenance of both the interior and exterior of the premises.

¹ At some point on or around 2016, defendants started naming these contracts "Rent-to-Own" which practice appears to continue into the present.

² Defendants, in documents have similarly described their practices in this manner. See fn. 16, *infra*.

³ Because the contracts contain conflicting terms, the determination of whether the contracts are residential rental contracts or property sale contracts, and the rights of class members that attach to such contracts are to be determined in this litigation.

⁴ The facts to date reveal that over the course of time defendants have called the various payments different terms. For example, down payment is sometimes called an "option fee" and the monthly mortgage payments are sometimes called "lease payments." Ultimately, the names given by defendants to their practices are less important than what actually occurs in these transactions. Under the terms of the contracts these payments operate in the same fashion as monthly installment or mortgage payments which are seller financed mortgage agreements.

6. In all cases, defendants reserve the right to evict the renter/purchaser for non-payment of any financial obligation under the agreement in the same manner of a residential landlord.⁵
7. Defendants never record any of these agreements with the county recorder's office.
8. Defendants never assume any of the responsibilities and obligations of a residential landlord under the Ohio Landlord - Tenant Laws found in R.C. §§5321.01, *et seq.*

Steven Partin, who is the son of defendants, Thomas and Melissa Partin, manages defendant, Heritage Unlimited LLC (hereinafter "Heritage").⁶ In his deposition, Steven Partin testified that Heritage is responsible for administering all aspects of these contracts for all of the other defendants.⁷ He identified the approximate two thousand pages containing all of the Rent-to-Own and Lease With Option to Buy contracts which defendants have provided in discovery to date.⁸

Attached hereto as Exhibits 1-4, are copies of typical Rent-to-Own and Lease With Option to Buy contracts provided in discovery from defendants and identified by Steven Partin which illustrate the rights and obligations contained in all of defendants' contracts.

Exhibit 1 is a Lease With Option to Buy contract between Heritage and Thomas Partin, as the Lessors, and David and Julie Murray as Lessees.⁹ Under section B, the monthly lease payment is set at \$622.40 and is comprised of a \$562.18 "mortgage" payment, \$35.33 in property taxes, and \$24.89 for "insurance." Under section D, it is acknowledged that the lessees have paid a down payment of \$3,843.00. This down payment is called by defendants a "commission for finding the property, facilitating the lease/purchase agreement, and as a

⁵ See Partin dep., p. 205.

⁶ Partin Dep., p. 7.

⁷ Partin Dep., p. 36-39.

⁸ Partin Dep., p. 286, Ex. 1.

⁹ Plaintiffs have Bates Stamped all the documents received in discovery and this exhibit starts on page 1454. These page numbers will be referenced as they appear on each exhibit page.

purchase price reduction payment toward the \$54,900.00 purchase price.”¹⁰ The balance of the “purchase price” is paid at a 12% per annum interest rate over a twenty year period.¹¹ While this contract appears to transfer an interest in real estate, under section “(H) Termination,” the lessors may evict (i.e. “terminate the lease”) if the lessees are in default of “nonpayment of rent” for more than ten days.

Attached as Exhibit 2 is another Lease With Option to Buy agreement between Thomas Partin as “Lessors” (sic) and Stacy and Jennifer Sexton as “Lessee” (sic).¹² This contract provides for a thirty year term with monthly payments of \$778.30 being allocated by “mortgage,” “taxes,” and “insurance.” Similar to Exhibit 1, there is a 7% down payment of \$4,900.00 with the balance financed at the rate of 12% per annum. The actual monthly payments are to be made to another defendant, Brush Creek Motorsports. Also, as found in Exhibit 1, the contract may be terminated for “nonpayment of rent for more than ten days.”¹³

Exhibit 3 is a Rent-To-Own contract between Thomas Partin listed as “Owner/Landlord” and Derry and Ginger Smith listed as “Purchaser/Tenants.” This agreement contains essentially the same provisions found in Exhibits 1 and 2 above. Some of the terms used are different but the basic obligations remain identical.¹⁴ In the thirty year amortization schedule (p. 1916), the 7% down payment is called an “option fee” and the balance (\$78,957.00) is to be paid off at the same 12% per annum interest rate.

¹⁰ See page 1455.

¹¹ Attached as page 1458 is the first page of the “Loan Amortization Schedule.” Most of the contracts are under a thirty year schedule.

¹² Page 1784,

¹³ See page 1781. In fact, these lessees did suffer termination of the lease in August 2020 for nonpayment of rent in a standard 3 day “Notice to Vacate.” See page 1794, and S. Partin Dep., p. 283.

¹⁴ By illustration, the “Lease payments” are called “Rent Payments” and in this paragraph the actual mortgage payments are now called “monthly Rent to Own” on page 1913. The “Purchaser/Tenants” must make all property tax and insurance payments under a thirty year schedule but can be evicted for non-payment of any financial obligation in arrears for more than ten days.

Exhibit 4 is another Rent-To-Own contract between defendant, Melissa Partin, as the "Owner/Landlord" and April and Bobby Cortijo as the "Purchaser/Tenants." In this agreement, the monthly payment of the amount financed is called a "monthly mortgage," and obligations and rights of the parties are the same as in the other agreements.¹⁵ In this transaction, as well as some of the other transactions, there is a separate "Purchase Agreement" which sets forth the fact that the selling price is \$49,900 with a \$3,493 (7%) down payment and the balance is to be paid as a "Seller financed mortgage [of] 30 yrs."¹⁶

Steven Partin acknowledged that the verbiage in the agreements has changed although different terms result in the same obligations. By illustration, the initial 7% payment made by the "Purchasers/Tenants" ("Lessee") has been referred to as a "down payment," or "option fee," or other terms such as a "commission or finder's fee," or "broker's commission." For example, see Partin's descriptions of the 7% down payment as a "down payment", and "broker's commission."¹⁷ The term "mortgage" also was changed.¹⁸

The contracts described above are administered by Heritage. Heritage receives all of the payments made by plaintiffs and the members of the class. Heritage is responsible for payment of the property taxes and the insurance payments received from the plaintiffs and the class members and it maintains the records of the payments received on behalf of the other defendants.

All the above facts are common to the named plaintiffs as well as each class member. The testimony of Steven Partin and a review of the many documents defendants have provided in discovery and which were identified by Steven Partin establish that defendants' practices and methods involved the identical eight elements previously described with respect to all plaintiffs

¹⁵ Page 605(a)-(c).

¹⁶ Page 605(d), and Partin Dep., p. 45.

¹⁷ Dep., p. 42-43.

¹⁸ Dep., p. 229.

and the members of the class. Regardless of the wording, defendants' actions in all cases constitute residential seller financed mortgage transactions in which defendants retain the power of a residential landlord to evict. Steve Partin made it clear that in all cases, no matter how long or how much a tenant/purchaser has paid under the contract, defendants may evict after any financial obligation is in arrears over ten days.¹⁹

II. ARGUMENT

In Ohio, certain criteria must be established in the determination to certify a case as a class action. In this action, all of the criteria are met thereby making class certification appropriate. The Ohio Supreme Court has described the criteria as two implied prerequisites and five express prerequisites. *Warner v Waste Management MGT., Inc.* (1988), 36 Ohio St. 3d 91, 521 N.E.2d 1091.

The *Warner* Court held that the first implied prerequisite is that an identifiable class must exist before certification is permissible, and the definition of the class must be unambiguous. *Id.*, at 96, 521 N.E. 2d 1091. The second implied prerequisite is that the class representatives must be members of the class. These implied prerequisites exist in this case. The class is easily defined and identified as described above and all the plaintiffs are members of the class.

A. Numerosity

The class is so numerous that joinder of all members is impracticable. Courts in Ohio have generally declined to specify a numerical limit for the size of a class action. This analysis must be made on a case-by-case basis. However, it has been stated that a class of more than 40 people satisfies the numerosity requirement. Plaintiffs have the burden of showing that a number of people have been harmed by defendants' actions. *Lasson v Coleman*, Mont. App. No. 21524,

¹⁹ Dep., p. 207 and 248.

2007-Ohio 3443, ¶29, 2007 WL 1934320, citing *Warner v. Waste Mgmt.* 36 Ohio St. 3d 91, 97, 521 N.E.2d 1091, 1097 ("[i]f the class has more than forty people in it, numerosity is satisfied.."). In this action there is substantial evidence provided by defendants' own testimony and confirmed by the contracts produced to date in discovery, that the number of class members would easily exceed one hundred. Steven Partin, as the Heritage manager who administers all of the contracts, is in the best position to know the number of contracts. In his deposition, he was asked to estimate the number of "Rent-to-Own" and "Lease With Option to Buy" residential contracts for each of the various defendants in Ohio. The total estimated number of such contracts was greater than 200.²⁰ That number far exceeds the necessary threshold for meeting the numerosity requirement of Rule 23(A)(1). See, *Mozingo v. 2007 Gaslight Ohio, LLC*, 2012 Ohio App. LEXIS 4510, *8, 2012-Ohio-5157, ¶9, (Ct. App. 9th Dist. 2012) (concluding a class of 100 meets the numerosity requirement).

B. Commonality

There are questions of law or fact common to the class. Rule 23(A)(2) In this litigation, the operative facts common to all members of the class are stated above at pages 3 and 4. The common questions of law are raised in the Second Amended Complaint and are as follows.

- (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 violate R.C. 5321.13, by limiting defendants'

²⁰ Steven Partin estimated the contract numbers as follows: for Melissa Partin (his mother) at 5-6 (Steven Partin Dep., p. 58); Brush Creek Motor Sports at 20-25 (Dep., p. 59-60); DECA Management at 30 (Dep., p. 63); Gary Rowland (in partnership with Thomas Partin) at 15 (Dep., p. 65); Equity Trust (IRA's of named defendants) at 50 (Dep., p. 67); T&M (Thomas and Melissa Partin) Partnership at 10-15 (Dep., p. 71); Equity Trust FBO Edmund Taylor IRA at 3 (Dep., p. 74); Heritage Unlimited LLC at 30-40 (Dep., p. 77); and Thomas Partin at 60-70 (Dep., p. 87).

statutory obligations as a landlord, and whether these agreements are unconscionable as defined by R.C. 5321.14.

- (c) Whether defendants' practices and methods constitute actions and omissions in violation of plaintiffs' and class members' rights under the Ohio Consumer Sales Practices Act. R.C. 1345.01, *et seq.*
- (d) Whether, defendants' practices and methods in entering into and servicing the contracts at issue, constitute fraud as to plaintiffs and class members.
- (e) Whether, defendants' practices and methods in entering into and servicing the contracts at issue, constitute a breach of contract.
- (f) Whether, defendants' practices and methods in entering into and servicing the contracts at issue, constitutes actions 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, making false promises regarding a material fact through advertising or other means; 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' practices and methods in entering into and servicing the contracts at issue, are in violation of R.C. 1322.45 by actions 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' practices and methods in entering into and servicing the contracts at issue, make defendants liable to plaintiffs and the members of the class under R.C. 1349.41, 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.

- (j) Whether, in entering into and servicing the contracts at issue, 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 “residential mortgage loans,” as those terms are defined by 15 U.S.C. §1602(x), (bb), and (dd)(5), respectively.
- (k) Whether, in entering into and servicing the contracts at issue, 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).

Commonality requires the presence of questions of law or fact common to the class. *Marks v. C.P. Chem. Co.*, (1987), 31 Ohio. St.3d 200, 202, 509 N.E.2d 1249. It is not necessary that all legal and factual questions be common to the class. *Id.* If legal or factual issues differ, the court will evaluate whether those differences defeat class certification when it analyzes the predominance and superiority requirements of Civ. Rule 23(B)(3). *Id.* The commonality requirement should be given a permissive application. *Warner, supra*, at 97, 521 N.E.2d 1097. “Commonality may be found where the basis for liability is common to the proposed class or where a common factual question exists on issues of negligence, breach of contract, illegal practice, or other applicable causes of action.” *Goree v. Northland Auto Enters.*, 2020-Ohio-3457, ¶53, 2020 Ohio App. LEXIS 2398, *26-27 (Ct. App. 8th Dist. 2020) (Internal quotation marks and citation omitted).

There will be a disparity in damages among the class members. Any disparity in damages is not a basis for denial of class certification. *Ojalvo v Ohio State Univ. Bd. of Trustees* (1984), 12 Ohio St. 3d 230, 232, 466 N.E.2d 875. The disparity in damages will exist, because different class members have paid varying amounts to defendants or have suffered specific damages

which have been caused by defendants' class wide actions. Civ. Rule 23 "does not require commonality with respect to damages but merely that the basis for liability is a common factor for all class members." *Id.* As demonstrated above with the description of the common questions of law, the "basis for liability," which triggers the plaintiffs and class members' entitlement to damages, is indeed the same for named plaintiffs and each member of the class.

C. Typicality

The next requirement for classification is a showing that the claims of the representative parties are typical of the claims of the class. Rule 23(A)(3). Typicality is meant to provide protection to absent class members and promote economy of the class action by ensuring that the interests of the named plaintiffs are substantially aligned with those of the class. 5 *Moore's Federal Practice* (3 Ed. 1977) 23-92 to 23-93, § 23.24[1].

In Ohio, "...a plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Baughman v. State Farm Mut. Auto. Ins. Co.*, (2000), 88 Ohio St.3d 480, 485, 2000-Ohio-397, 77 N.E.2d 1265. In the instant case, the claims of plaintiffs and all class members are based upon the same contracts and course of conduct of the defendants. The *Baughman* Court stressed that the defenses or claims of the representative class need not be even substantially identical to those of the class. In citing *1 Newberg On class Actions* (3rd Ed. 1992), the Court described this requirement as follows.

'The rationale for this provision is that a plaintiff with typical claims will pursue his or her own self-interest in the litigation and in so doing will advance the interests of the class members, which are aligned with those of the representative. In such a case, the adjudication of the plaintiff's claim regarding defendant's wrongdoing would require a decision on the common question of the defendant's related wrongdoing to the class generally.'

‘Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. In other words, when such a relationship is shown, a plaintiff’s injury arises from or is directly related to a wrong to a class, and that wrong includes the wrong to the plaintiff. Thus, a plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. **When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.**’

Id., at 88 Ohio St.3d 485. (emphasis added). Applied to this case, defendants’ acts in entering into and administering the contracts at issue, as described above, were unquestionably “directed at” and “affected both the named plaintiffs and class sought to be represented” in the same manner. Consistent with *Baughman*, the typicality requirement has been met.

D. Adequacy of Representation

Rule 23(A)(4) requires that the “the representative parties will fairly and adequately protect the interests of the class.” The analysis under this requirement is divided into a consideration of the adequacy of the representatives and the adequacy of counsel. *Warner v. Waste Mgmt.*, 36 Ohio St. 3d 91, 98, 521 N.E.2d 1091, 1097, 1988 Ohio LEXIS 114, *19. Thus, in order to establish adequacy of representation of the class: (1) the interests or claims of the class representatives must not be antagonistic to the interests of the class;²¹ and (2) the counsel for the representatives must be qualified, experienced, and able to conduct the proposed litigation.

The claims of the named plaintiffs, as described in the common questions of law, establish that the claims of the plaintiffs are identical to those of the class. Defendants’ actions, through the use of the same contracts for all class members and through the same course of conduct, make the claims raised in the litigation identical. These allegations in the Complaint make it

²¹ *Hamilton v. Ohio Sav. Bank*, 82 Ohio St.3d 67, 77-78, 694 N.E.2d 442, 452 (1998).

clear that the named plaintiffs, as representatives of the class, share the same interests as the class in the prosecution of the legal claims described above. There are simply no antagonistic interests between the class representative and the class as a whole.

It does not matter that defendants may assert a defense unique to one or more of the named plaintiffs or the class. “[A] unique defense will not destroy typicality or adequacy of representation unless it is ‘so central to the litigation that it threatens to preoccupy the class representative to the detriment of the other class members.’” *Hamilton v. Ohio Sav. Bank*, 82 Ohio St. 3d 67, 78, 694 N.E.2d 442, 453 (1998), *quoting*, 5 Moore’s Federal Practice (3 Ed.1997) 23-126, Section 23.25[4][b][iv], and at 23-98, Section 23.24[6].

Regarding the adequacy of class counsel, plaintiffs’ counsel have each handled class actions on behalf of plaintiffs in both state and federal courts, including class actions prosecuted under Rule 23(B)(2) and (B)(3). Both counsel are thoroughly familiar with both the class action process and unique set of rules that apply to prosecuting and resolving these actions. Equally important, each counsel has significant experience in handling major civil litigation including complex civil rights cases and jury trials in state and federal courts.

Michael O’Hara was plaintiffs’ trial counsel on two reported class actions in federal court as early as the 1980’s, to wit: *Mastin v. Fellerhoff*, 526 F. Supp. 969 (S.D. Ohio 1981) and *Doe v. Staples*, 706 F.2d 985, 986 (6th Cir. 1983). In recent years, Mr. O’Hara was plaintiffs’ counsel in *Stein v. HHGregg, Inc.*, 873 F.3d 523, 526 (6th Cir. 2017), and *Doe v. Potter*, 225 S.W.3d 395, 396 (Ky. Ct. App. 2006) (this matter involved the post settlement appeal of the trial court’s order requiring disclosure of clergy abuse victims’ names to prosecutors). Both Mr. O’Hara and Mr. Woliver handled separate federal court class actions involving jail conditions in Hamilton County, Ohio (Mr. O’Hara), and Clermont County, Ohio (Mr. Woliver). Both Mr. O’Hara and

Mr. Woliver have handled a number of federal class action Rule 23(B)(2) cases, during the time each work for legal services funded programs in the 1970's and 1980's.

While not a class action, Mr. Woliver handled major litigation involving the Ohio Mental Health Act of 1988. He represented a number of mental health boards across Ohio (including both Brown County and Clermont County) challenging the method the Ohio Department of Mental Health allocated state community mental health funds to mental health boards across the state. All mental health boards in Ohio joined as parties to the litigation. After an extensive trial, the action was appealed up to the Ohio Supreme Court before resolution. *Clermont County ADAMH Board, et al. v. Hogan, et al.*, 79 Ohio St.3d 358, 681 N.E.2d 1322, 1997-Ohio-31. Presently, Mr. Woliver is plaintiffs' counsel in a housing class action pending in Clermont County Court of Common Pleas filed in 2022.

More particularly, both Mr. Woliver and Mr. O'Hara have handled cases in the past involving the protection and enforcement of consumer rights, including rights of consumers under state consumer protection acts as well as rights of consumers under the Ohio Consumer Sales Practices Act and federal Truth in Lending Act. Mr. Woliver handled a reported Ohio Consumer Practices Act case when that Act was in its infancy. *Thomas v. Sun Furniture And Appliance Co.*, 61 Ohio App. 2d 78 (1st Dist. C/A 1978). Counsels' actions in pursuing this class action case to date further support their adequacy to properly represent the interests of the class members in this case. Finally, the undersigned each counsel has both the staff and financial resources to properly and fully litigate this class action.

Thus, plaintiffs have met their burden under Rule 23(A)(4).

E. Rule 23(B) Considerations

In addition to the above criteria, a class may be maintained if Rule 23(B)(1), (2), or (3) is met. While Rule 23(B)(3) is the most appropriate of the criteria, Rule 23(B)(2) is also applicable.

1. Rule 23(B)(2)

Rule 23(B)(2) provides for class treatment of cases where the actions of the parties opposing the class “have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole...” As argued above, plaintiffs seek significant equitable remedies, including both declaratory and injunctive relief. (See generally, Second Amended Complaint, ¶ 75 and the request for relief). More specifically, in their Second Cause of Action, Plaintiffs aver that,

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.

(Second Amended Complaint, ¶75, pp. 19).

In addition, in their request for relief, plaintiffs ask the Court for similar declaratory and injunctive relief with respect to: defendants’ violations their obligations as landlords set out in R.C. 5321.04 and 5321.13; defendants’ violations of “RC. 5313.02 and all other statutory provisions protecting the rights of vendees under the Ohio Land Installment Contract Laws;” defendants violations of their obligations as both mortgage lender and mortgage broker under RC. 1322.01, 1322.07, 1322. 40; defendants’ unconscionable acts or practices concerning real estate mortgages in violation of R.C. 1345.031; and defendants’ practice of charging and collecting insurance premiums without providing any actual insurance policy constitutes, both a

deceptive and unconscionable practice in violation of R.C. 1345.02 and 1345.03; (Second Amended Complaint, requests for relief, ¶¶ 2, 3, 5, 6 and 7, p. 25-26).

If the declaratory and injunctive relief were merely incidental to the damage relief sought, then Rule 23(B)(2) would not apply. *Wilson v. Brush Wellman Inc.*, (2004), 103 Ohio St.3d 538, 2004-Ohio-5847, 817 N.E.2d 59, ¶13; also see *Blankenship v. CFMOTO PowerSports, Inc.*, 166 Ohio Misc. 2d 21, 961 N.E.2d 750, 2011-Ohio-6946 (2011). In this action, the declaratory and injunctive relief is not *de minimus* or incidental, it is critical to efforts to fully remedy defendants' multiple violations of their statutory obligations and protect plaintiffs and class members from continuing violations in the future.

Contrary to the Court's reasoning in *Blankenship*, plaintiffs and the class members here have not only suffered damages as a result of the transactions with defendants, but many class members are still in an on-going relationship with defendants which requires declaratory relief to instruct all parties moving forward. By contrast, in *Blankenship*, the Court held that "any harm resulting from the purchase of vehicles in question has already occurred" *Id.*, at ¶ 54. In short, the injury in *Blankenship* was complete, whereas the injury to some of the plaintiffs and many of the class members may well continue absent equitable intervention from this Court. We know, for example that Plaintiffs Watson, Bragg, and the Elliots, as well as approximately 200 class members are currently under contracts with defendants and, thus, will be the victims of defendants' ongoing violations absent equitable intervention.

In *Warner, supra*, the Ohio Supreme Court did not foreclose a finding that both Rule 23(B)(2) and (B)(3) could be applicable in the same action. *Warner*, 36 Ohio St.3d, at 95. The Court suggested that establishing subclasses would properly address the different forms of relief.

Such would certainly be appropriate here, rendering certification under (B)(2) of a subclass of individuals currently under contract fully appropriate here. *Id.*

2. Rule 23(B)(3)

Rule 23(B)(3) requires two findings by the court: (1) that the common questions predominate over questions affecting only individual members; and (2) that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. “The key should be whether the efficiency and economy of common adjudication outweigh the difficulties and complexity of individual treatment of class members' claims.” *Warner v. Waste Mgmt.*, *supra*, 36 Ohio St. 3d at 96, 521 N.E.2d at 1095-1096, *quoting* See 7A Wright, Miller & Kane, *Federal Practice & Procedure* (1986), Section 1760. “The Rule 23(b)(3) predominance inquiry” is meant to “tes[t] whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 376 (2011), *quoting*, *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997). “To meet the predominance requirement [of Federal Rule 23(b)(3)], a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof.” *Randleman v. Fidelity National Title Ins. Co.*, 646 F.3d 347, 352-53 (6th Cir. 2011).

That plaintiffs are pursuing multiple claims for relief or causes of action does not defeat (B)(3) certification. This is so because all causes of action asserted by plaintiffs ultimately depend on the same type of contract²² and the same methods and practices employed by

²² There is no substantive difference between the Rent to Own contracts and the Lease Option contracts. Both the terms of those contracts and the manner in which payments under those contracts were handled are virtually identical as to all Plaintiffs and class members.

defendants in handling payments under, and otherwise servicing those contracts. Under such circumstances (B)(3) certification is entirely appropriate.

In *Broomfield v. Craft Brew All., Inc.*, 2018 U.S. Dist. LEXIS 177812, (N.D. Cal. Sep. 25, 2018), the federal district court certified seven (7) separate causes of action for class treatment pursuant to Federal Rule 23(B)(3), including: claims under the state's Consumer Legal Remedies Act, Unfair Competition Law, False Advertising Law, common law fraud, intentional misrepresentation, negligent misrepresentation and unjust enrichment/restitution. *Id.* *3, *13, and see analysis at *27-*41. In a general sense these are much like the types of claims for which plaintiffs seek certification here.²³

Similarly, in *Peng v. Mastroinni*, 2021 U.S. Dist. LEXIS 195300, at *20 (S.D. Fla. June 25, 2021) the Court certified under 23(B)(3) a class action involving multiple claims for relief. The Court explained its decision by noting that the claims relied on generally the same underlying agreement and related documents.

As noted, the core focus of Plaintiffs' [Second Amended Complaint] is the interpretation of the Subscription Agreement and related documentation; whether Defendants violated these agreements by exercising the conversion provision of the EB-5 Loan Contract without prior approval; and whether the Limited Partners unlawfully were deprived of their loan principal. These issues are of central importance to the claims brought on behalf of Plaintiffs and the Putative Class Members. Furthermore, Plaintiffs and every class member are alleged to have suffered the same type of injury, i.e., the deprivation of the loan principal invested towards the Harbourside Project and deprivation of their membership rights in the Developer following Defendants' improper exercise of the EB-5 Loan Agreement Conversion Clause.

²³The claims as set out in the Second Amended Complaint include Plaintiffs contention that the methods and manner in which Defendants processed and serviced these substantively identical contracts violated: Ohio Land Installment Contract Law (First Cause of Action); Ohio Landlord Tenant Law (Second Cause of Action); Ohio Consumer Sales Practices Law (Third Cause of Action); Common Law Fraud (Fourth Cause of Action); Ohio Mortgage Lender and Mortgage Broker Law (Fifth Cause of Action); Ohio Unconscionable Acts Or Practices Law (Sixth Cause of Action); Federal Consumer Credit Disclosure and Protection Act (Seventh Cause of Action); Breach of Contract (Eighth Cause of Action); and Ohio Nonbank Mortgage Lender Law (Ninth Cause of Action). All of these claims will depend upon substantively identical contracts and substantially the same the same core set facts relating to the method by which Defendants handled and processed payments under those contracts. See description of common facts at pages 3 and 4 above.

Id. at *20-21. The same is true here. As shown above, the “core focus” of plaintiff’s Second Amended Complaint is substantively identical agreements and related documents that affect all class members alike. Moreover, there is one overriding core issue: whether the methods and practices defendants use in handling and applying payments under these substantively identical contracts, which are common to all plaintiffs and class members, violate their obligations under the various state and federal laws set out in Causes of Action One through Nine. (See Second Amended Complaint, pp. 19-25). As to each of these claims²⁴ the same proof will apply equally to each named plaintiff as well as each class member.

The superiority requirement of Rule 23(B)(3) tests whether “class wide litigation of common issues will reduce litigation costs and promote greater efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). The test “is meant to ensure that aggregation will materially advance the solution of multiple claims.” *Newberg on Class Actions*, § 4:49. “Class actions . . . may permit the plaintiffs to pool claims which would be uneconomical to litigate individually.” *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001).

In a case similar to the instant case, class plaintiffs alleged that the disclosure statements provided by the developers failed to accurately disclose to the condominium purchasers the amount of monthly fees that would be necessary to maintain the association. The trial Court certified the action to proceed as a class pursuant to both 23(B)(1) and (B)(3). The Franklin County Court of Appeals affirmed.

²⁴As noted the claims as set out in the Second Amended Complaint include plaintiffs’ contention that the methods and manner in which defendants processed and serviced these substantively identical contracts violated: Ohio Land Installment Contract Law (First Cause of Action); Ohio Landlord Tenant Law (Second Cause of Action); Ohio Consumer Sales Practices Law (Third Cause of Action); Common Law Fraud (Fourth Cause of Action); Ohio Mortgage Lender and Mortgage Broker Law (Fifth Cause of Action); Ohio Unconscionable Acts Or Practices Law (Sixth Cause of Action); Federal Consumer Credit Disclosure and Protection Act (Seventh Cause of Action); Breach of Contract (Eighth Cause of Action); and Ohio Nonbank Mortgage Lender Law (Ninth Cause of Action).

Because the trial court found that evidence of the *method used by appellants to calculate the monthly assessments, as well as evidence of the disclosure statements actually disseminated*, would either prove or disprove the claims of all of the members of the putative class, that particular factual issue predominated over the entire action. Furthermore, without specifically stating so, it is evident that the trial court believed, based upon its analysis of all of the other factors, that a class action was the superior and preferred method for adjudicating this controversy, and thus, the requirements of Civ.R. 23(B)(3) had been met.

New Albany Park Condo. Ass'n v. Lifestyle Cmtys., LTD, 195 Ohio App. 3d 459, 476, 2011-Ohio-2806, ¶58, 960 N.E.2d 992, 1005, (10th Dist. 2011). (Emphasis added). The same holds true here. Each of the claims are based on use of instruments (Rent to Own or Lease Option contracts) that contain terms that are in substance identical, as to both the class representatives and the class members. Additionally, as to each of the statutory claims raised in the Second Amended Complaint, the statutory obligations of the defendants are likewise identical as to each of the plaintiffs and class members. Finally, the method used by defendants in processing and handling the payments received under the Rent to Own and Lease Option contracts is also the same as to the named plaintiffs and class members. Thus, these common issues will certainly predominate over any individual issue that might surface in this litigation, making certification appropriate under Rule 23(B)(3).

Nor will the need for individualized damages determinations defeat certification of a class under (B)(3). “Although [defendant] argues individual inquiries must be conducted into the number of hours worked and pay deductions taken, the need for individualized damages calculations is not a reason to deny class certification.” *Sherman v. Am. Eagle Express, Inc.*, No. 09-575, 2012 U.S. Dist. LEXIS 30728, at *32 (E.D. Pa. Mar. 8, 2012), citing, *In re Cmty. Bank of N. Va. Second Mtg Loan Litigation*, 418 F.3d 277, 305-06 (3d Cir. 2005).

In *Powell v. Tosh*, 280 F.R.D. 296 (W.D. Ky. 2012), the federal district court explained the importance of judicial efficiency in considering a certification motion under FRCP 23(B)(3).

Finally, the Court may consider the judicial efficiency of certifying a class versus joinder of the potential class members or trying individual lawsuits. For example, if class members were to file multiple claims in multiple fora, judicial resources would be wasted on duplicative lawsuits. [Citation omitted]. Generally this inefficiency can be avoided through joinder and intervention of those potential class members who may be interested in joining this suit. [Citation omitted] Although the putative class members can be readily identified and are all located within the Western District of Kentucky, ***judicial efficiency would be better served by making a determination of liability in one class action instead of in potentially hundreds of separate actions.***

Id. at 305. Denying certification and transforming this single action into as many as 200 individual lawsuits would serve only to burden the courts and add exponentially to the costs of litigation. As one court has explained, “[t]he alternatives to class certification—piecemeal state court proceedings or individual negotiations with defendants—are less efficient than resolving all claims collectively in one action.” *Peng v. Mastroinni*, *supra*, 2021 U.S. Dist. LEXIS 195300, at *26.

That plaintiffs and class members share multiple factual and legal issues and claims that are virtually identical compels the conclusion that certification under (B)(3) is entirely appropriate. Indeed, it would be the height of judicial inefficiency to litigate those common questions in 200 or more separate lawsuits. Plaintiffs are, therefore, entitled to have this action proceed as a class under Rule 23(B)(3).

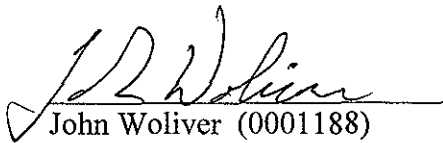
III. CONCLUSION

Plaintiffs have demonstrated above that their proposed class meets each of the requirements of Ohio Rule of Civil Procedure 23(A). In addition, plaintiffs have met their burden to establish that certification to proceed as a class action is appropriate under both Rule

23(B)(2) and 23(B)(3). Accordingly, plaintiffs respectfully request the Court to enter an order certifying this action to proceed as a class action under both Rule 23(B)(2) and (B)(3) on behalf of the following described class:

all persons who entered into a 'Rent-to-Own' or 'Lease With Option to Buy' agreements with any defendant to rent and/or purchase of 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. These contracts are best described as seller financed residential mortgage agreements in which the sellers retain the right of a residential landlord to evict for non-payment. 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.

Respectfully submitted,



John Woliver (0001188)
Attorney for Plaintiffs
204 North Street
Batavia, Ohio 45103
Ph: 513-732-1632
Fax: 513-732-1639
jwoliver@fuse.net



Michael O'Hara (OH 0014966)
O'Hara, Taylor, Sloan, & Cassidy
Attorney for Plaintiffs
25 Town Center Blvd., Suite 201
Covington, Kentucky 41017
Ph: 859-331-2000
Fax: 859-578-3365
mohara@oharataylor.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was served upon the following on this 15th day of June, 2022 by electronic mail as indicated: Konrad Kircher konrad@rittgers.com and Ryan J. McGraw ryan@rittgers.com and Richard L. Goettke rgoettke@rosedobyns.com.


John Woliver 0001188

LEASE WITH OPTION TO BUY

This lease is between **HERITAGE AND THOMAS PARTIN** at 720 West Main Street, West Union, Ohio 45693, LESSORS, and **DAVID MURRAY AND JULIE MURRAY, HUSBAND AND WIFE, 2041 CHURCH CREEK ROAD BLUE CREEK OHIO 45616**, LESSEES.

(A) Premises; Term

LESSORS lease to LESSEES, for the term beginning on the 30th day of August 2014 and ending on the 30 day of August 2034, the following real property described as **114 COMPTON HILL WEST UNION OHIO 45693**.

(B) Lease Payments

The lease payment for the term shall be \$622.40 due monthly. \$562.18 per month for mortgage, \$35.33 per month for taxes, \$24.89 per month for insurance. Payments shall be made payable to **HERITAGE**, 720 East Main Street, West Union, Ohio 45693 or such other address or location as lessor may designate in a written notice to lessee.

(C) Maintenance of Premises; Taxes

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

LESSEES understand that property taxes, mobile home 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 mortgage balance/option to buy purchase price, according to the Buyer's 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. The principal payment of \$3843.00 is non-refundable and all parties acknowledge that it is not paid as any rental or lease payments under the terms of the lease, and shall not be refunded if the premises are destroyed. 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 Tenants or any of Tenants' agents, invitees, rent shall not be diminished or abated while such damages are under repair, and Tenants shall be responsible for the costs of repair not covered by insurance.

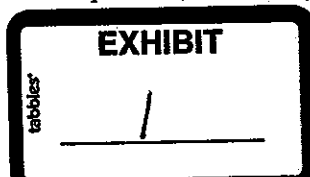
LESSEE understands that this property is not insured for liability by the LESSOR. LESSEES will indemnify and save LESSORS harmless from liability for claims for personal injury or property damage brought by third persons, and arising out of acts or omissions by LESSEES in their use or occupancy of the premises.

LESSORS will continue to cover the dwelling with homeowner's insurance. LESSEES agree to reimburse LESSORS for the cost of this insurance. LESSEES understand that this insurance does not cover personal contents.

(E) Occupancy and Use of Premises

LESSEES will occupy and use the premises, in a careful, safe, proper, and lawful manner.

(F) Option to Buy



The term of this lease will be for five years commencing on August 30, 2014, and ending on September 30, 2019, at which time the Tenants may purchase the property. Parties acknowledge that upon the execution of this Agreement, Tenants/Buyers shall pay the Landlords/Sellers the sum of \$3843.00 as commission for finding the property, facilitating the lease/purchase agreement, and as a purchase price reduction payment toward the \$54900.00 purchase price if the property is purchased according to the terms hereof. The payment of \$3843.00 is non-refundable and all parties acknowledge that is not paid as any rental or lease payment under the terms of the lease. 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. The lease may also be terminated according to Paragraph I herein and according to law.

If the lease remains in effect throughout the period without default, the Sellers shall prepare a promissory note for the remaining balance of the amount owed of \$46748.25 secured by a mortgage deed. The balance due for the sixty-first (61st) month payment is \$46748.25. The note, mortgage deed, and deed shall be executed within 30 days of the end of the lease term and the Buyers shall become the record owner by deed with the Seller/Mortgagor HERITAGE holding a mortgage note and 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.

The promissory note shall be for the remaining purchase price of \$46748.25 at 12% interest plus closing costs to be paid by Buyers including any due and owing taxes, extended risk insurance on the realty and building only, transfer tax, and fees to the Recorder and Auditor of Adams County, Ohio and a document preparation fee or \$250.00. Parties acknowledge that the interest Annual Percentage Rate as required to be calculated after inclusion of costs and fees shall be higher in the final closing documents upon sale than 12%, but the actual interest rate used to calculate the cost of the borrowed money amount of \$46748.25 shall be 12%. Buyers shall not pay a penalty for prepayment of the lease.

(G) Assignment

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

(H) Termination

LESSORS may terminate this lease without notice or on such as may be required by law if LESSEES 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

LESSEES 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 LESSEES 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.

WITNESS as to the following signatures this _____ day of _____ 2014.

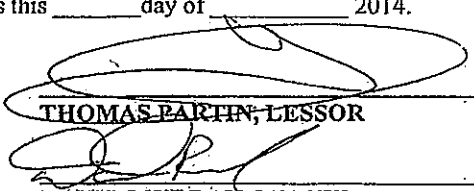
DATE

8-30-14

DATE

8-30-14

DATE


THOMAS PARTIN, LESSOR


DAVID MURRAY, LESSEE


JULIE MURRAY, LESSEE

STATE OF OHIO, COUNTY OF ADAMS, ss:

The foregoing deed was acknowledged before me this _____ day of _____,
2014 by Thomas Partin, LESSOR.

NOTARY PUBLIC

STATE OF OHIO, COUNTY OF ADAMS, ss:

The foregoing deed was acknowledged before me this _____ day of _____,
2014 by DAVID MURRAY AND JULIE MURRAY, LESSEES.

NOTARY PUBLIC

Prepared by: Thomas Partin 720 East Main Street West Union, Ohio 45693



DAVID MURRAY
JULIE MURRAY 294-74-9260
114 Compton Hill
West Union OH

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LOAN AMORTIZATION SCHEDULE

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Data Input:

Beginning Balance:	51,057.00	Ann. Int. Rate:	12.000 %
Term, Months:	240	First Pmt Month:	9
Calculated Pmt:	562.18	First Pmt Year:	2014
Taxes:	35.33		
Ins:	24.89		

9/1/2014 \$622.40 Due on 30th

	INTEREST	PRINCIPAL	BALANCE
January	0.00	0.00	0.00
February	0.00	0.00	0.00
March	0.00	0.00	0.00
April	0.00	0.00	0.00
May	0.00	0.00	0.00
June	0.00	0.00	0.00
July	0.00	0.00	0.00
August	0.00	0.00	0.00
September	510.57	51.61	51,005.39
October	510.05	52.13	50,953.26
November	509.53	52.65	50,900.61
December	509.01	53.17	50,847.44
Total 2014	2,039.16	209.56	

INTEREST PRINCIPAL BALANCE

LEASE WITH OPTION TO BUY

This lease is between THOMAS PARTIN at 720 West Main Street, West Union, Ohio 45693, LESSORS, and STACY R. SEXTON AND JENNIFER M. SEXTON, husband and wife, of 20400 SR 41, Peebles, Ohio, LESSEE.

(A) Premises; Term

LESSORS lease to LESSEES, for the term beginning on the 16th day of July 2014 and ending on the ___ day of August 2044, the following real property described as *6470 Dawson Road, Lynchburg, Ohio 45142*.

(B) Lease Payments

The lease payment for the term shall be \$778.30 due monthly. \$669.63 per month for mortgage, \$74.26 per month for taxes, \$34.41 per month for insurance. Payments shall be made payable to BRUSHCREEK MOTORSPORTS, 720 East Main Street, West Union, Ohio 45693 or such other address or location as lessor may designate in a written notice to lessee.

(C) Maintenance of Premises; Taxes

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

LESSEES understand that property taxes, mobile home 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 mortgage balance/option to buy purchase price, according to the Buyer's 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. The principal payment of \$4900.00 is non-refundable and all parties acknowledge that it is not paid as any rental or lease payments under the terms of the lease, and shall not be refunded if the premises are destroyed. 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 Tenants or any of Tenants' agents, invitees, rent shall not be diminished or abated while such damages are under repair, and Tenants shall be responsible for the costs of repair not covered by insurance.

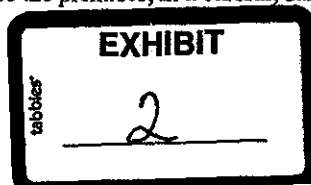
LESSEE understands that this property is not insured for liability by the LESSOR. LESSEES will indemnify and save LESSORS harmless from liability for claims for personal injury or property damage brought by third persons, and arising out of acts or omissions by LESSEES in their use or occupancy of the premises.

LESSORS will continue to cover the dwelling with homeowner's insurance. LESSEES agree to reimburse LESSORS for the cost of this insurance. LESSEES understand that this insurance does not cover personal contents.

(E) Occupancy and Use of Premises

LESSEES will occupy and use the premises, in a careful, safe, proper, and lawful manner.

(F) Option to Buy



The term of this lease will be for five years commencing on August 16, 2014, and ending on September 16, 2019, at which time the Tenants may purchase the property. Parties acknowledge that upon the execution of this Agreement, Tenants/Buyers shall pay the Landlords/Sellers the sum of \$4900.00 as commission for finding the property, facilitating the lease/purchase agreement, and as a purchase price reduction payment toward the \$70,000.00 purchase price if the property is purchased according to the terms hereof. The payment of \$4900.00 is non-refundable and all parties acknowledge that is not paid as any rental or lease payment under the terms of the lease. 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. The lease may also be terminated according to Paragraph I herein and according to law.

If the lease remains in effect throughout the period without default, the Sellers shall prepare a promissory note for the remaining balance of the amount owed of \$63544.72 secured by a mortgage deed. The balance due for the sixty-first (61st) month payment is \$63544.72. The note, mortgage deed, and deed shall be executed within 30 days of the end of the lease term and the Buyers shall become the record owner by deed with the Seller/Mortgagor THOMAS PARTIN holding a mortgage note and 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.

The promissory note shall be for the remaining purchase price of \$63544.72 at 12% interest plus closing costs to be paid by Buyers including any due and owing taxes, extended risk insurance on the realty and building only, transfer tax, and fees to the Recorder and Auditor of Highland County, Ohio and a document preparation fee or \$250.00. Parties acknowledge that the interest Annual Percentage Rate as required to be calculated after inclusion of costs and fees shall be higher in the final closing documents upon sale than 12%, but the actual interest rate used to calculate the cost of the borrowed money amount of \$63544.72 shall be 12%. 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 LESSEES without LESSORS express written consent.

(H) Termination

LESSORS may terminate this lease without notice or on such as may be required by law if LESSEES 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

LESSEES 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 LESSEES 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.

WITNESS as to the following signatures this _____ day of _____ 2014.

DATE

2-18-14

DATE

7/18/14

DATE

THOMAS PARTIN, LESSOR



STACY R. SEXTON, LESSEE



JENNIFER M. SEXTON, LESSEE

STATE OF OHIO, COUNTY OF ADAMS, ss:

The foregoing deed was acknowledged before me this ____ day of _____,
2014 by Thomas Partin, LESSORS.

NOTARY PUBLIC

STATE OF OHIO, COUNTY OF ADAMS, ss:

The foregoing deed was acknowledged before me this ____ day of _____,
2014 by STACY R. SEXTON and JENNIFER M. SEXTON, LESSEE.

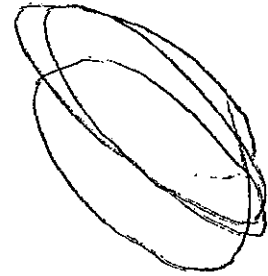
NOTARY PUBLIC

Prepared by: Thomas Partin 720 East Main Street West Union, Ohio 45693

937
661
5/14

NOTICE TO LEAVE THE PREMISES

(FOR RESIDENTIAL PROPERTY ONLY)



To Stacy Suter Tenant:

You will please notice that I want you on or before 8/12, 20 20
to leave the premises you now occupy, and which you have rented of Thomas Partin,
situated and described as follows:

6470 Dawson Rd

In Lynchburg, County of Highland and State of OK

Grounds: Non-Payment Partial Feb 2020 Rent 124.50

March Rent + Late Fee 833.38

April Rent + Late Fee 833.38

May Rent + Late Fee 833.38

June Rent + Late Fee 833.38

July Rent + Late Fee 833.38

\$4291.90

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

8/6, 20 20

Landlord's Address 720 E Main St

West Union, OK 75693

RENT TO OWN

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

(A) Premises; Term

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

**3363 CARPENTER ROAD
MT. ORAB, OH 45154**

(B) Rent Payments

The rent payment for the term shall be ^{968.21}~~\$972.21~~ due monthly. ~~\$812.16~~ for monthly Rent To Own, ~~\$80.94~~ for monthly taxes, ~~\$74.11~~ for monthly insurance, ~~\$5.00~~ for Monthly Water Bill Processing. Payments shall be made payable to **HERITAGE** 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 Tenants or any of Tenants' agents, invitees, rent shall not be diminished or abated while such damages are under repair, and Tenants 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.

EXHIBIT

3

0000001913

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 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 the 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.

Buyers 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 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 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 supersede all prior agreements of the parties and the parties agree there are no other agreements between them except those expressly stated herein.

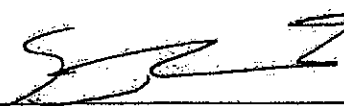
(L) Water Bills

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.

N/A

WITNESS as to the following signatures:

DATE



Steven Partin, Manager for THOMAS PARTIN
Landlord

3-5-19

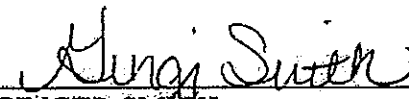
DATE



DERRY SMITH
Tenant

3-5-19

DATE



GINGER SMITH
Tenant

Derry & Ginger Smith	3363 Carpenter Road, Mt. Orab, OH 45154
Taxes	\$ 80.94
Insurance	\$ 74.11
Water Bill	\$ 5.00
Total	\$ 160.05

155.05

INPUTS:	
Sale Price	84,900.00
Option Fee %	7%
Total Option Fee	5,943.00
Rent To Own Amount:	78,957.00
Term (years):	30
First Payment Date:	04/01/2019
Monthly Payment:	\$812.16
Monthly Payment Plus Tax/Ins	\$972.21

968.21 <- TOTAL MONTHLY PAYMENT

Monthly Amortization Schedule:

Payment	Date	Payment Amount	Rent	Applied	Balance
1	4/1/2019	812.16	789.57	22.59	78,934.41
2	5/1/2019	812.16	789.34	22.82	78,911.59
3	6/1/2019	812.16	789.12	23.05	78,888.55
4	7/1/2019	812.16	788.89	23.28	78,865.27
5	8/1/2019	812.16	788.65	23.51	78,841.76
6	9/1/2019	812.16	788.42	23.74	78,818.02
7	10/1/2019	812.16	788.18	23.98	78,794.03
8	11/1/2019	812.16	787.94	24.22	78,769.81
9	12/1/2019	812.16	787.70	24.46	78,745.35
10	1/1/2020	812.16	787.45	24.71	78,720.64
11	2/1/2020	812.16	787.21	24.96	78,695.69
12	3/1/2020	812.16	786.96	25.20	78,670.48
13	4/1/2020	812.16	786.70	25.46	78,645.02
14	5/1/2020	812.16	786.45	25.71	78,619.31
15	6/1/2020	812.16	786.19	25.97	78,593.34
16	7/1/2020	812.16	785.93	26.23	78,567.12
17	8/1/2020	812.16	785.67	26.49	78,540.63
18	9/1/2020	812.16	785.41	26.76	78,513.87
19	10/1/2020	812.16	785.14	27.02	78,486.85
20	11/1/2020	812.16	784.87	27.29	78,459.55
21	12/1/2020	812.16	784.60	27.57	78,431.99
22	1/1/2021	812.16	784.32	27.84	78,404.15
23	2/1/2021	812.16	784.04	28.12	78,376.03
24	3/1/2021	812.16	783.76	28.40	78,347.62
25	4/1/2021	812.16	783.48	28.69	78,318.94
26	5/1/2021	812.16	783.19	28.97	78,289.97
27	6/1/2021	812.16	782.90	29.26	78,260.71
28	7/1/2021	812.16	782.61	29.55	78,231.15
29	8/1/2021	812.16	782.31	29.85	78,201.30
30	9/1/2021	812.16	782.01	30.15	78,171.15
31	10/1/2021	812.16	781.71	30.45	78,140.70
32	11/1/2021	812.16	781.41	30.75	78,109.95
33	12/1/2021	812.16	781.10	31.06	78,078.89

2019

2020

RENT TO OWN

This rental lease is between **MELISSA PARTIN**, at 45 Partins Peak Peebles, OH 45660, Owner/Landlord, and **APRIL CORTIJO** and **BOBBY CORTIJO**, of 424 Poplar Street West Union, OH 45693, Purchaser/Tenants.

(A) Premises; Term

Owner shall rent to Tenant, for the term beginning on the 15TH day of March, 2017 and ending on the 15th day of March 2047, the following real property described as:

**446 POPLAR STREET
WEST UNION, OH 45693**

(B) Rent Payments

The rent payment for the term shall be ~~529.93~~ due monthly, \$477.35 for monthly mortgage and \$29.93 for monthly taxes, \$30.00 for monthly insurance. Payments shall be made payable to ~~MELISSA PARTIN~~ or such other address or location as lessor may designate in a written notice to lessee. Payments due on the 15th 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 mortgage 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 Tenants or any of Tenants' agents, invitees, rent shall not be diminished or abated while such damages are under repair, and Tenants 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.



605(a)
1

OWNERS will continue to cover the dwelling with homeowner's insurance. TENANTS agree to reimburse OWNERS for the cost of this insurance. ~~OWNERS' homeowner's 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 every day wear and tear do not need approval.

(F) Option to Buy

Tenants may purchase the property when the balance of \$49,900 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.

WITNESS as to the following signatures:

DATE

3-15-17

DATE

3-15-17

DATE

MELISSA PARTIN, LANDLORD

April Cortijo

APRIL CORTIJO, Tenant

Bobby Cortijo

BOBBY CORTIJO, Tenant

STATE OF OHIO, COUNTY OF ADAMS, ss:

The foregoing deed was acknowledged before me this ____ day of ____, 2017
by Melissa Partin, LANDLORD/Owner.

NOTARY PUBLIC

STATE OF OHIO, COUNTY OF ADAMS, ss:

The foregoing deed was acknowledged before me this ____ day of ____, 2017
by April Cortijo and Bobby Cortijo, TENANTS/Purchasers.

NOTARY PUBLIC

Prepared by: Melissa Partin, 45 Partins Peak Peebles, OH 45660

Heritage Unlimited, LLC
720 East Main Street
West Union, Ohio 45693
(937) 544-3344

Purchase Agreement

The undersigned

ARIEL CORTIJO SS# _____
LORELY CORTIJO SS# _____ of
424 POPLAR ST City WEST UNION
State OH Zip 45693 Phone _____ hereinafter
called the Purchaser or Buyer, their heirs and assigns, whether one or more, offers and
agrees to purchase from Heritage Unlimited, LLC, whose address is 720 East Main
Street, West Union, Ohio 45693, Phone (937) 544-3344, hereinafter called the Seller, the
following described real estate:

424 POPLAR ST
WEST UNION

Reservations (Do not include marking property lines, leaking faucets, running/leaking
toilets or outside spigots) NO

The property shall include the land, all appurtenant rights, privileges and easements and
all building and fixtures in their present condition including such of the following as are
now on the property: all electrical, plumbing, bathroom and permanent heating fixtures,
and NONE.

Purchaser relies on his/her own inspections of the premises as to the condition of the
premises and not on any other representation by any other person. Purchaser is aware
that **Heritage Unlimited, LLC** only warrants the plumbing and heat for the first ten (10)
days after possession of property by purchaser. No warranty on central air units.

Purchaser agrees therefore to pay the sum of FOUR NINE THOUSAND
NINE HUNDRED Dollars (\$ 49900) on the following terms:
71 DOWN = 3493 977.35 mo plus taxes/ins
SELLER FINANCED MORTGAGE 30 yrs

This agreement to be accepted on or before _____

Buyer selects a: ☐ Home Warranty in the amount of \$699.00
☐ Land Improvement Warranty in the amount of \$399.00
☐ Money-Back Guarantee in the amount of \$ _____ per month
☒ 10 Day Plumbing & Heating Warranty

Buyer ☐ has ☒ has not received a copy of the Restrictions. NA

Buyer is aware of the Road Owners Association in the amount of \$ 0

Purchaser has deposited FOUR HUNDRED NINETY NINE Dollars
(\$ 499) with Heritage Unlimited, LLC as earnest money to apply on the
purchase price or be refundable to Purchaser only if this offer is not accepted by Seller or
if Seller fails to perform within the time stipulated to execute deed or lease with option to
buy contract. Purchaser agrees that if he/she fails to complete the terms of this agreement
that 100% of earnest money is forfeited to Heritage Unlimited, LLC.

Closing shall be held on or before MAR. 15 2017

If closing does not occur by the above date, buyer is aware that they will be required to
deposit 1% of the purchase price with Heritage Unlimited, LLC in order to hold the
property for 30 additional days. If buyer fails to perform on this contract by the closing
date, and fails to deposit additional funds to hold the property, buyer is aware that the
property will be placed back on the market for sale, \$250.00 Closing Cost at time of
closing.

Tax agreement: PRO-RATED @ CLOSING

Purchaser shall be entitled to possession of said real estate on or before @ Closing

The Seller agrees to maintain fire and winds form insurance on the improvements, if any, on said real estate until such time as deed or land installment contract is delivered to Purchaser. The tenant will need to obtain own policy for Renters Insurance. The Seller agrees to:

X Enter into a Rent to Own contract with the Purchaser

Other: Deed @ payoff

Upon acceptance, this offer shall become binding upon and accruing to the benefit of Purchaser and Seller and shall be deemed to contain all of the terms and conditions agreed upon. The Purchaser agrees to be responsible for obtaining evidence of title or title insurance if the same is desired. Seller shall not be responsible for proof of title. Purchaser(s) is aware that Heritage Unlimited, LLC is acting as a Property Manager for Melissa Patton (seller) Veronica Radu (agent) has acted as agent for Sellers only. Purchaser has been made aware and understands that the Seller is a licensed real estate agent in the State of Ohio.

Purchaser(s) [Signature] Date 3-2-17 Time _____

[Signature] Date 3/2/17 Time _____

Seller _____ Date _____ Time _____

for Heritage Unlimited, LLC

By: Veronica Radu Sales Associate-Heritage Unlimited, LLC

359.12

29.93 mo. Taxes

30 mo Ins?