

ENCLOSURE  
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CONTRACT OF PURCHASE

Kevin Zipperle, whose home and business addresses and telephone numbers are as set forth below (herein "**Buyer**", whether one or more) agrees to purchase, and Gary Davis, whose address for purposes hereof is One RiverPointe Plaza, Unit 312, Jeffersonville, Indiana 47130 ("**Seller**"), agrees to sell the property hereinafter described ("**Condominium Unit**") for the purchase price and upon the terms and conditions hereinafter more particularly set forth.

1. SUBJECT PROPERTY

Condominium Unit No. 312 of The Harbours, a building (sometimes referred to herein as the "**Building**") subject to a condominium regime, together with the Percentage Interest in the Common Areas of the condominium regime, as more particularly described in the Declaration of The Harbours Horizontal Property Regime ("**Declaration**") together with the exclusive use of Parking Space(s) No(s). 308, 323, 657, as located in the place(s) shown in the Exhibits attached to the Declaration. The Declaration is recorded in Miscellaneous Drawer 32, Instrument No. 10085 of the Clark County, Indiana records. Terms defined in the Declaration, when used herein, shall have the same meaning as set forth in the Declaration, unless a different meaning is expressly set forth herein.

2. PURCHASE PRICE

A. The purchase price is .....\$ 355,000.00  
Buyer has herewith deposited the sum of .....\$ 3,000.00  
as earnest money ("**Earnest Money**") to bind this sale, which Earnest Money shall either be applied to the Purchase Price at closing or otherwise treated as herein provided.

B. The deposit made by Buyer under the terms of this Contract shall be held in an account maintained with Seller. Should this Contract be terminated as herein provided, then Seller shall either retain the Earnest Money as liquidated damages (when authorized by the hereafter stated provisions) or Buyer shall be entitled to a refund of such Earnest Money (when authorized by the hereafter stated provisions), as the case may be.

C. Buyer may secure his own financing (or shall promptly apply for a loan with the Lender(s) designated by Seller) and shall accept such financing as may be available at then prevailing market interest rates, terms and discounts. Buyer shall pay all costs of financing and closing incident to such loan.

In the event that Buyer cannot secure such financing within fifteen (15) days after the date of execution of this Contract by Seller having in good faith sought to secure the same, individually, and as directed by Seller, and Buyer advises Seller in writing within such fifteen (15) day period that Buyer cannot secure such financing, then this Contract shall be void, and Buyer's Earnest Money shall be refunded to Buyer.

3. EXTRAS OR CHANGES

In the event Buyer desires any extras or changes in the Condominium Unit, such extras or changes shall be listed in writing on an Addendum attached hereto and Buyer shall pay for said extras or changes in advance. In the event of Buyer's default hereunder, Buyer shall forfeit all sums paid for said extras and/or changes and such sums shall be retained by Seller as liquidated damages.

#### 4. COMMON AREA CONSTRUCTION

It is agreed by the Buyer that the various steps of construction of improvements to the Common Areas shall be deemed to have been satisfactorily and fully performed when approved by the appropriate governmental authority or agency exercising jurisdiction of the matter, and shall be deemed to be completed and fully complying with the terms of this Contract when the appropriate governmental authority or agency has issued its certificate (or other like documents) approving of the construction of the improvements to the Common Areas.

#### 5. CLOSING

This transaction shall be consummated at the Closing, which shall occur on the closing date ("**Closing Date**") which shall be on or before September 8, 2006. In connection with designating the Closing Date, Buyer and Seller shall also designate the time of Closing. The place of Closing shall be at The Harbours or such other location as may be mutually agreed upon by Buyer and Seller. At such time and place the following transactions (the "**Closing**") shall occur:

1. Seller shall:

(a) Execute and deliver to Buyer a Special Warranty Deed conveying the Condominium Unit to Buyer, such conveyance to be made by Seller and accepted by Buyer subject to the title exceptions shown in the ALTA Title Commitment for The Harbours which is available for review at The Harbours' office at One RiverPointe Plaza, Jeffersonville, Indiana 47130, during normal business hours;

(b) Furnish, at Seller's expense, tax certificates showing no delinquent taxes for the years prior to the year of Closing.

2. Buyer shall:

(a) Pay Seller the balance of the Purchase Price (after allowing credit for the Earnest Money and the amounts paid for any extras or changes in accordance with Article 3, above);

(b) Pay his prorated share of real estate taxes for that tax year, if applicable, and all other sums required by the Lender and all other costs of closing other than those expressly agreed to be paid by Seller pursuant to Article 5.1, above; and

(c) Pay two (2) months Regular Assessment for Common Expenses (calculated on the basis of Buyer's Percentage Interest and the Budget) to the Association.

The aforesaid matters to which this conveyance may be made subject and the aforesaid title exceptions which may be set forth in such ALTA Owner's Policy of Title Insurance shall not constitute objections to title. In the event that any title objection is not cured by the Closing Date and Buyer does not waive such objection(s), then Buyer or Seller may elect to cancel this Contract in which case Buyer's Earnest Money shall be refunded, thereby releasing all parties. Seller shall have no obligation to cure title objections. Buyer shall be entitled to possession of the Condominium Unit upon disbursement of the net proceeds of the Purchase Price to Seller and funding of Buyer's loan (if any).



## 6. INDIANA CONDOMINIUM LAW

At or before Closing, Seller shall deliver to Buyer a true and correct copy of the recorded Declaration and Articles of Incorporation of The Harbours Condominium Association, Inc. ("**Articles of Incorporation**") and adopted Code of By-Laws of The Harbours Condominium Association, Inc. ("**By-Laws**").

The Harbours is subject to the provisions of the Indiana Horizontal Property Law (Chapter 6 of Article 1 of Title 32 of the Indiana Code), which is commonly referred to as the Indiana Condominium Law.

Indiana Condominium Law provides, in part, that the administration of a condominium complex is governed by By-Laws. The By-Laws are attached as Exhibit "B" to the Declaration referenced above.

Because the Condominium Unit being purchased pursuant to this Contract is part of The Harbours, this purchase is likewise subject to the provisions of Indiana Condominium Law, the Declaration referenced above, and the By-Laws attached as Exhibit "B" to the Declaration. Copies of the Declaration and the By-Laws are available for review at The Harbours' office at One RiverPointe Plaza, Jeffersonville, Indiana 47130, during normal business hours.

## 7. DEFAULT AND REMEDIES

Upon failure of Buyer to comply herewith by the Closing Date, Seller may terminate this Contract and retain all sums deposited by Buyer, including sums deposited in payment of optional items, as liquidated damages or seek such other relief as may be provided by law. It is hereby agreed that the retention of said sums in the event of Buyer's breach, is a reasonable estimate of the actual damages to Seller caused by Buyer's breach and is not a penalty. Upon failure of Seller to comply herewith by the Closing Date, Buyer may, as Buyer's sole and exclusive remedy, obtain back the Earnest Money thereby releasing all parties from this Contract.

## 8. RESTRICTION INDENTURE

Seller reserves the right to impose prior to Closing whatever restriction indenture Seller deems necessary for maintenance and servicing of sanitary and storm sewers, streets, and maintenance and operation of all common facilities and Common Areas.

## 9. BUDGET

Buyer acknowledges that Seller has informed Buyer of the assessments associated with the Condominium Unit and that such assessments are determined by the Budget based upon Seller's good faith estimate of the Common Expenses for the operations of The Harbours. Buyer acknowledges that such Budget has been based upon Seller's good faith estimate of such costs and does not constitute a representation or warranty on the part of the Seller thereof.

## 10. INSPECTION; NO WARRANTY; "AS IS" and "WHERE IS"

A. Within ten (10) days after the date of execution of this Contract by Seller (the "**Inspection Period**"), Buyer hereby acknowledges that it has the right to the inspection of the Condominium Unit. Buyer shall order all independent inspections at Buyer's expense immediately after acceptance of this Contract unless agreed otherwise. All of Buyer's and its agents' entries into the Condominium Unit and Building shall be at reasonable times during normal business hours and after prior notice to Seller and Seller or Seller's agent shall have the right to accompany Buyer or its agents during any activities performed by Buyer on the Condominium Unit. If any inspection or test performed



by Buyer disturbs the Condominium Unit, Buyer will restore the Condominium Unit to the same condition as existed before the inspection or test. Buyer shall defend, indemnify, and hold harmless Seller and its respective partners, shareholders, trustees, officers, directors, agents, contractors, and employees and the Building and the Condominium Unit from and against any and all losses, costs, damages, claims, liabilities, and expenses, including reasonable attorneys' fees, and including mechanics' and materialmen's liens arising out of or in connection with Buyer's inspection of the Condominium Unit. If an inspection report reveals a defect in any of the systems or appliances contained in the Condominium Unit or a defect in the Condominium Unit itself, Buyer, within the Inspection Period, shall give Seller a copy of such report and Buyer shall identify in writing on the document signed by the Buyer, delivered to Seller each defect Buyer wants cured. Within seven (7) days after Seller receives such copy or document, Seller may give notice to Buyer which of such defects (all, some or none) Seller is willing to cure. Each defect Seller undertakes to cure shall be cured to Buyer's reasonable satisfaction, and before Closing or at a time otherwise agreed by Buyer and Seller. Buyer or Seller may terminate this Contract if: (i) Seller states in the notice given to Buyer that Seller will not cure all of the defects Buyer wants cured; or (ii) Seller fails to timely give such notice. Additionally, Buyer acknowledges that the square footage calculations contained in any MLS Listing, marketing and/or other materials or documents related to the Condominium Unit are not to be relied upon as accurate. Buyer can, within the Inspection Period, verify any and all measurements with respect to square footage, and if Buyer is not satisfied with such measurements of square footage, Buyer may terminate this Contract pursuant to this Article 10 of the Contract; otherwise, any and all defects with respect to square footage calculations and/or representations are hereby waived. It is understood that the Purchase Price set forth in this Contract is not based on the square footage of the Condominium Unit. Upon termination, the Earnest Money shall be returned to Buyer.

Buyer may waive Seller's inability or unwillingness to cure any defect Buyer wants cured by giving Seller written notice to that effect within seven (7) days after Seller has given notice of termination. If Buyer so waives, the parties shall proceed to Closing without any obligation on Seller to cure the defects. Neither of the parties shall have the right to terminate this Contract if (a) the cost of curing all defects does not exceed \$250.00 (which cost shall be paid by Seller); or (b) the defect as to which a right to terminate is claimed is one which Seller disclosed to Buyer in writing at or before Buyer's execution of this Contract. If Buyer fails to timely obtain the inspection and the report described above, or fails to either timely give Seller a copy of the inspection report or to timely identify each defect Buyer wants cured, Buyer shall be deemed to have waived Buyer's right to have an inspection (together with a report on it), or to have Seller cure any defect disclosed by the inspection. In such event, neither Seller nor Buyer may terminate this Contract.

**B. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR SELLER'S WARRANTIES OF TITLE CONTAINED IN THE SPECIAL WARRANTY DEED DELIVERED AT THE CLOSING, THIS SALE IS MADE AND WILL BE MADE WITHOUT REPRESENTATION, COVENANT OR WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED OR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY) BY SELLER. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS CONTRACT, BUYER AGREES TO ACCEPT THE CONDOMINIUM UNIT ON AN "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY, ALL OF WHICH SELLER HEREBY DISCLAIMS, EXCEPT FOR THE WARRANTY OF TITLE CONTAINED IN THE SPECIAL WARRANTY DEED DELIVERED AT CLOSING. EXCEPT FOR SUCH SPECIAL WARRANTY DEED, NO WARRANTY OR REPRESENTATION IS MADE BY SELLER AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUALITY, CONDITION, OPERATION OR INCOME, COMPLIANCE WITH DRAWINGS OR SPECIFICATIONS INCLUDING SQUARE FOOTAGE, ABSENCE OF DEFECTS, ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, ABSENCE OF FAULTS, FLOODING OR COMPLIANCE WITH LAWS AND REGULATIONS INCLUDING, WITHOUT LIMITATION,**



**THOSE RELATING TO HEALTH, SAFETY AND THE ENVIRONMENT. BUYER ACKNOWLEDGES THAT BUYER HAS ENTERED INTO THIS CONTRACT WITH THE INTENTION OF MAKING AND RELYING UPON HIS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE AND LEGAL CONDITION OF THE CONDOMINIUM UNIT, AND THAT EXCEPT FOR THE SPECIAL WARRANTY DEED, BUYER IS NOT NOW RELYING, AND WILL NOT LATER RELY, UPON ANY REPRESENTATIONS AND WARRANTIES MADE BY SELLER OR ANYONE ACTING OR CLAIMING TO ACT BY, THROUGH, UNDER OR ON SELLER'S BEHALF CONCERNING THE CONDOMINIUM UNIT. THE PROVISIONS OF THIS ARTICLE 10.B SHALL SURVIVE INDEFINITELY ANY CLOSING OR TERMINATION OF THIS CONTRACT AND SHALL NOT BE MERGED INTO THE CLOSING DOCUMENTS.**

#### 11. ENTRY BY BUYER

Prior to the time of Closing, Buyer and Buyer's agents and designers, if any, shall have the right, at their own risk, to enter the Condominium Unit at reasonable hours established by Seller to take measurements and for similar purposes relating to interior decorations, provided that, in exercising such rights, Buyer and Buyer's agents or designers will not interfere with existing tenants or other Condominium Unit owners, and Seller will not have any liability for injuries to persons or property in connection with any such entry.

#### 12. RISK OF LOSS

In the event that any part of the Condominium Unit, the Building or the Common Areas should be damaged or destroyed before the consummation of this transaction, Seller may, at Seller's election, cancel and terminate this Contract, in which event the Earnest Money shall be refunded to Buyer and all parties automatically shall be released; or if Seller shall elect to repair such damage and such damage may reasonably be repaired in a period not to exceed one hundred and eighty (180) days from the date of such damage, this Contract shall remain in full force and effect. No title shall pass to Buyer prior to Closing.

#### 13. PRORATIONS OF TAXES AND CHARGES

Taxes shall be prorated as of the date of Closing and Seller shall credit Buyer with the prorated amount of all taxes for prior years and the year of Closing and Buyer expressly assumes the obligation to pay all taxes for prior years and the year of Closing. Common Expenses and all assessments, howsoever denominated, shall be prorated as of the date of Closing and Buyer expressly assumes the obligation to pay all Common Expenses and assessments for the year of Closing.

#### 14. FLOOD PLAIN AND JEFFERSONVILLE FLOOD CONTROL WALL

A portion of the real property described in the Declaration is located within flood zone "A" (100 year flood plain). The Jeffersonville Flood Control Wall runs through the property described in the Declaration. Refer to the ALTA Title Commitment for a more complete description of the Jeffersonville Flood Control Wall.

#### 15. GENERAL PROVISIONS

A. This Contract constitutes the sole and entire agreement between the parties. All prior agreements, whether oral or written, are hereby superseded. The provisions of this Contract may not be changed, altered or modified except in writing and signed by the Buyer and an officer of the Seller. Waiver by the Seller of any terms, conditions or provisions of this Contract shall not be construed as a waiver of any other or subsequent term, condition or provision of this Contract.

B. If any term, condition or provision of this Contract is declared illegal or invalid for any reason by a court of competent jurisdiction, the remaining terms, conditions, and provisions of this Contract shall, nevertheless, remain in full force and effect.

C. Wherever the content of this Contract so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

**D. TIME IS OF THE ESSENCE IN THIS CONTRACT.**

E. Neither this Contract nor Buyer's rights hereunder, including Buyer's right to recover the Earnest Money as set out herein, shall be assigned, transferred, pledged, mortgaged or encumbered without the prior written consent of Seller and any attempt to do so shall be void and of no effect. Seller's failure to give its consent to an assignment shall not give rise to any claims or damages against Seller. Furthermore, this Contract shall not be recorded.

F. There are no collateral understandings or representations or agreements other than those contained herein. No salesman or agent of the Seller has authority to modify the terms herein nor any authority whatsoever to make any reference, representation or agreement not contained in this Contract and no reference, representation or agreement not contained herein shall be binding upon Seller or in any way affect the validity of the Contract or form any part hereof. Buyer acknowledges that no representations have been made by Seller or his agents in order to induce the Buyer to enter into this Contract, other than as expressly stated herein. Without limiting the generality of the foregoing, Buyer acknowledges that neither Seller nor its agents have made any representation or statement to Buyer of the investment potential or resale at any future date, at a profit or otherwise, of the Condominium Unit; nor has Seller or its agents rendered any advice or expressed any opinions to Buyer regarding any tax consequences of ownership of the Condominium Unit (other than the customary real property taxes and interest deductions available to Buyer as a result of home ownership and financing).

G. Buyer acknowledges that he has read and understands each and every part of this Contract. Execution of this document by Buyer alone shall only constitute an offer to purchase. Upon execution by an authorized officer or agent of Seller and delivery of a fully executed copy hereof to Buyer, this document shall become binding upon the parties hereto, their heirs, successors and assigns (except as limited herein).

H. The delivery of any item and the giving of notice in compliance with this Contract shall be accomplished by delivery of the item or notice to the party intended to receive it or by mailing it to the address of such party set forth in this Contract, certified mail, return receipt requested.

I. Notwithstanding any of the above provisions, in the event that a bona fide dispute should arise between Buyer and Seller, before the consummation of this Contract, and if such bona fide dispute cannot in good faith be resolved completely and to the satisfaction of both parties within ten (10) days after such dispute has arisen, then Seller shall have the right, upon written notice to Buyer, to terminate this Contract and return the Earnest Money to Buyer, and no cause of action shall accrue on behalf of Buyer because of such termination.

J. There are no real estate commissions due or payable as part of this transaction.

K. In any circumstance where this Contract is terminated as herein provided, Seller and Buyer each agree to execute such documents as may be required by Seller with whom the Earnest Money has been deposited so as to release such Earnest Money to the party entitled thereto in accordance with the terms hereof, and this provision shall remain binding upon Seller and Buyer notwithstanding such termination of this Contract.



L. The effective date of this Contract shall be the latest date of execution by Seller and Buyer, as shown on the signature page hereto. This Contract may be executed in multiple original counterparts, each of which shall be an original for all purposes.

M. Other Provisions: Execution of this contract is contingent on the Seller acquiring title to Unit No. 1110 simultaneously with this closing. The sale/purchase price herein is based on net proceeds to the Seller and the seller of unit no. 1110 by separate transaction. This contract is not contingent on any third-party financing.

“SELLER”

By: *Gary M Davis*  
Name: GARY M DAVIS  
Date: 9-1-06

“BUYER”

By: *Kevin A Zipperle*  
Name: KEVIN A. ZIPPERLE  
Business Address N/A

Residence Address ONE RIVERPOINT PLAZA #311  
JEFFERSONVILLE, IN 47130  
Residence Telephone 562-299-9907

Date: 9-1-06

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Business Address \_\_\_\_\_

Residence Address \_\_\_\_\_

Residence Telephone \_\_\_\_\_

Date: \_\_\_\_\_