

## **Closing Georgia Commercial Real Estate Transactions**

Embassy Suites – Galleria

2815 Akers Mill Road

Atlanta, GA 30339

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# **Reviewing the Purchase Contract**

# **I. Understanding Key Provisions of the Contract**

- Producing the initial draft of the contract and exhibits
- "The power lies with the drafter of the document"
- Evaluating type of property – improved vs. unimproved land requires different contract considerations
- Pre-negotiating exhibits to streamline closing

# Property Description

- Alternative Considerations - Use of:
  - Existing legal description
  - Seller's vesting legal description
  - Completion of new survey
  - Quit-Claim Deed from Seller
- Determination of purchase price based on final acreage calculation
- Importance of obtaining appurtenant easement rights – for access, parking, utilities and storm drainage
- Evaluation of site and engineering/architectural plans for development project
- Subdivision with Seller's retained property and reserved rights

# Payment Provisions

- All cash transaction
- Financing contingencies
- Loan Assumptions
- Timing and discretionary considerations with financing contingencies and loan assumptions
- Seller Financing

# Representations and Warranties

- Future Development vs. Improved Property
- Survival Period
- Negotiating the "Basket and Cap," including credit enhancement mechanisms
- Addressing current legal compliance and nexus with Buyer's due diligence
- Remedies:
  - Seller cure obligations
  - Buyer termination rights
  - Purchase price offset
  - Damages

# Contingencies and Conditions on Obligations to Close

- Importance of establishing and clearly defining all contingencies and applicable time periods
  - Inspection Period – "Free Look"
  - Permit Contingency (development, lease and build-to-suit projects)
  - Financing Contingency
  - Acquisition Contingency
  - Seller Site Work
- Additional Earnest Money Requirements and Extensions
- Self-help by the parties and associated costs
- Remedies and cost reimbursement

# Escrow Agreement

- Escrow Agent Alternatives:
  - Third Party (Title Company)
  - Counsel
  - Pre-negotiation of Escrow Agreement with Title Company
- Use of Separate Escrow Agreement or inclusion within Purchase and Sale Agreement
- Situs of Escrow Agent and retention of funds
- Use of Escrow Agreement to address:
  - Construction and site delivery requirements
  - Outstanding real estate taxes
- Conflicts of Interest



## II. Obtaining and Reviewing Additional Documents

- Lease Agreements
  - Abstracting Key Terms
  - Underwriting and Analyzing Considerations
  - Estoppel Certificate and SNDA
  - Government as a party
- Condominium Documents
  - Declarant Rights
  - Estoppel Certificate
  - Duration
- Management Agreements
  - Termination Requirements
  - Interview of current property management company
  - Disclosure of books and records