

Examining Access Agreements

Determining the viability of real estate for your new project

By Joe Saponaro

Meyers, Roman, Friedberg & Lewis

In the fast-paced world of real estate transactions, assessing the viability of targeted real property for use in your latest project or acquisition has become an integral part of due diligence inspections, which are a key component to its success. However, timelines for due diligence periods have been streamlined to the point that many potential buyers are agreeing to time frames that are shorter than normal.

To help these potential buyers get the most out of their due diligence inspections, access agreements, drafted by experienced legal counsel, are being utilized regularly in many commercial real estate transactions. Access agreements allow the potential buyer to access the targeted real property in order to start assessing its viability while the parties are still negotiating the definitive purchase and sale agreement (PSA), and conversely, such access agreements protect the seller's rights and interest in the property from undue injury and harm.

Depending on the negotiated letter of intent or term sheet, an access agreement may lengthen the due diligence period. However, such time frame may not be extended in the PSA because the due diligence period commences on

the effective date set forth in the access agreement. The following key provisions, although not all-inclusive, should be found in all access agreements:

Scope of access

This provision not only addresses the specific type of access being granted to the potential buyer, its agents, representatives, contractors, engineers, surveyors, employees and attorneys, and the limitations thereon, but typically includes the following:

- The potential buyer's rights to: (i) conduct and undertake any and all customary studies, tests, examinations, inspections and investigations – i.e. survey, feasibility, engineering, drainage, property condition and zoning (collectively, "Studies"); (ii) ascer-

tain and confirm the suitability of the property for the potential buyer's intended use; and (iii) review all due diligence materials and confirm the results of any and all Studies with respect to the property; and

- The potential seller's rights to disapprove any invasive Studies or any Studies that, in its reasonable judgment, could result in injury to the property, expose it to any losses, damages, etc. or otherwise adversely affect its interest in the property.

Indemnification

Potential buyer will generally be required to indemnify and hold seller harmless as from any losses, damages, liens, liabilities, causes of action, claims and the like (collectively, "Losses") aris-



Taking Your Real Estate Projects From Concept to Completion and Beyond.

meyers roman | **mr**

Meyers, Roman, Friedberg & Lewis
A Legal Professional Association

Joseph M. Saponaro
Real Estate Group Chair

Peter D. Brosse
David V. Croft
Bryan J. Dardis
Scott M. Lewis
Lisa A. Lowe
Hunter W. Benson
J. Breton McNab
Elizabeth A. Stark

28601 Chagrin Blvd., Ste 600
Cleveland, OH 44122
Phone: 216.831.0042
www.meyersroman.com

NAIOP

AWARDS of EXCELLENCE

WEDNESDAY, MAY 11, 2022

3:15 PM - 7:30 PM

WINDOWS ON THE RIVER | POWERHOUSE NAUTICA
2000 SYCAMORE, CLEVELAND, OH 44113



Photo by Aerial Agents

ing in connection with the potential buyer's entry onto the property and the Studies performed thereon; but it should exclude (i) any contamination disclosed or discovered and not caused by potential buyer; and/or (ii) any Losses caused by seller and any affiliated person or entities.

Obligations of potential buyer

- Potential buyer (and any party that enters the property on its behalf) must obtain commercial general liability

Access agreements allow the potential buyer to access the targeted real property in order to start assessing its viability while the parties are still negotiating the definitive PSA, and conversely, such access agreement protects the seller's rights and interest in the property from undue injury and harm.

insurance with limits and conditions set forth by seller;

- Any and all Studies performed on the property must be at potential buyer's sole cost and expense, and be paid promptly, such that no lien on the property – such as mechanic's, materialmen's or any other lien – shall be permitted by potential buyer or any party that enters the property on its behalf;
- Potential buyer is obligated to take all necessary action and implement all reasonable protections to ensure that the Studies performed on the property pose no threat to the safety of persons or the environment, and cause no damage to the property; and
- Potential buyer must return the property to the condition in place prior to the performance of the Studies, except for (i) any condition that existed

DON'T MISS THE OPPORTUNITY TO SHOWCASE YOUR FIRM WITHIN THE OFFICIAL AWARDS PROGRAM! CALL 216.251.0035 OR EMAIL INFO@PROPERTIESMAG.COM FOR DETAILS.

NAIOP
COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
NORTHERN OHIO CHAPTER

For registration information or sponsorship inquiries, contact NAIOP Northern Ohio at 440-899-0010 or email naiop@wherryassoc.com



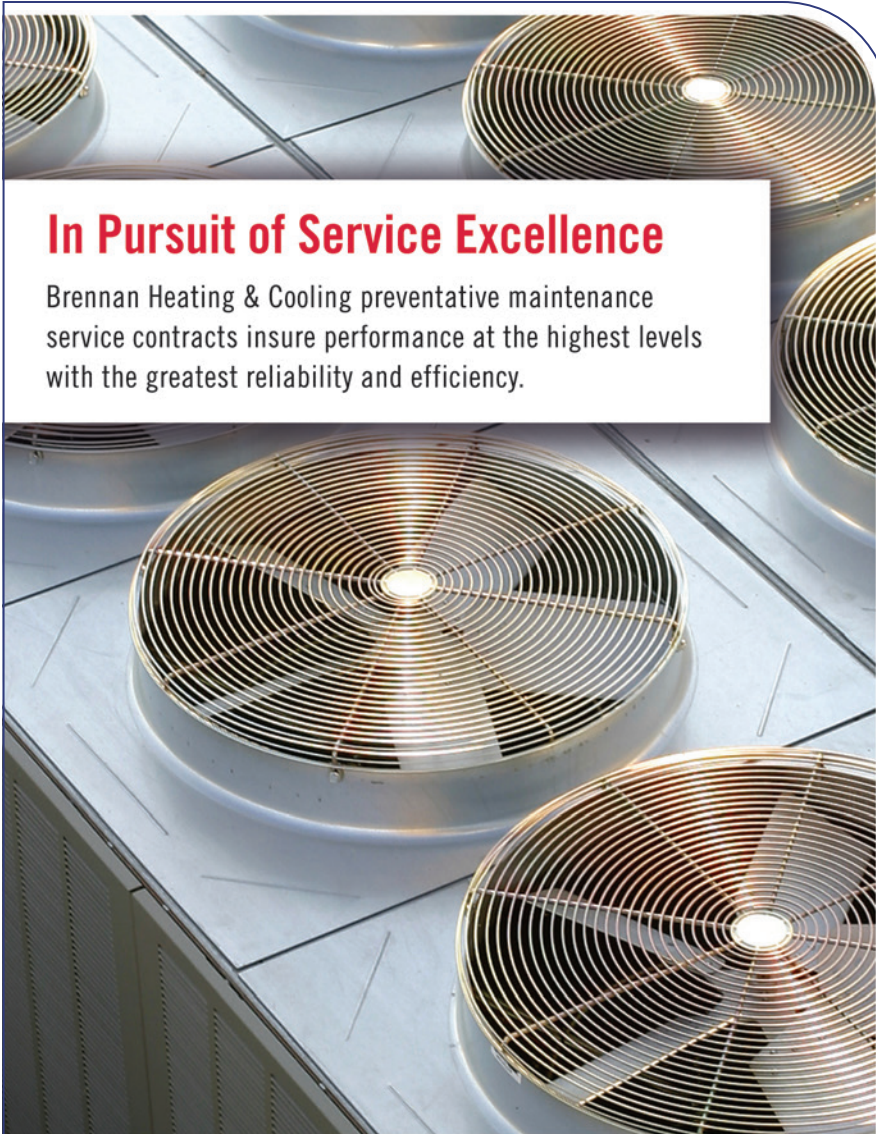
Suntrol It!

Choose Award-Winning Suntrol

- Custom, Decorative Glass & Wall Designs
- Sun Protection
- Safety & Security
- Enhances Privacy

CALL TODAY
If you can dream it,
we can do it.

Suntrol.com
800-466-8468



In Pursuit of Service Excellence

Brennan Heating & Cooling preventative maintenance service contracts insure performance at the highest levels with the greatest reliability and efficiency.



24-7

(216) 391-4822

www.brennanhvac.com

COMMERCIAL + INDUSTRIAL

prior to potential buyer's access to the property that would be determined in part by a review of the due diligence materials provided by potential seller at the commencement of the term; and/or (ii) the determinations of qualified environmental consultants utilized to perform the Studies.

Term

The term will generally commence on the effective date of the access agreement and terminate upon the execution of the definitive PSA or another outside date, if such PSA has not been executed.

Access agreements provide potential buyers with the opportunity to "kick the tires" on a targeted property without entering into a binding PSA, and without incurring the costs or taking on

Access agreements provide potential buyers with the opportunity to "kick the tires" on a targeted property without entering into a binding PSA, and without incurring the costs or taking on the numerous and sometimes onerous obligations and liabilities that can arise once such a definitive PSA has been executed.

the numerous and sometimes onerous obligations and liabilities that can arise once such a definitive PSA has been executed. Working in tandem with your real estate counsel from the onset with legal tools such as access agreements will assist even the most seasoned developer or potential buyer to navigate the uncertainties that may arise in real estate projects or acquisitions. **P**

Joe Saponaro is chair of the Meyer Roman Real Estate Group. He can be reached by phone at 216.831.0042 ext. 145 or by email at jsaponaro@meyersroman.com. For more information, visit Meyers, Roman, Friedberg & Lewis online at www.meyersroman.com.