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THE PUBLIC UTILITIES COMMISSION OF
COLUMBUS, OHIO

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Muncie/D'Elia Development LLC,

Complainant,

v.

American Electric Power,

Respondent.

Case No. 08-158-EL-CSS

PUCO

**COMPLAINANT MUNCIE/D'ELIA DEVELOPMENT LLC'S MEMORANDUM
CONTRA TO RESPONDENT COLUMBUS SOUTHERN POWER COMPANY'S
MOTION TO DISMISS**

Now comes Complainant Muncie/D'Elia Development LLC ("Muncie"), by and through the undersigned counsel, and hereby states that its Complaint against Respondent Columbus Southern Power Company must not be dismissed for following reasons:

1. The Public Utilities Commission (the "Commission") has jurisdiction to hear matters relating to the rules and regulations promulgated by the Commission;
2. The Commission has jurisdiction over the issues raised in the Complaint because such issues relate to services provided by Respondent;
3. The expertise of the Commission in interpreting the rules and regulations is necessary for the resolution of this matter;
4. The Complaint is not duplicative;
5. Muncie has standing because it is and was the owner of the house and carried the risk of loss or damage at the time of the house move; and
6. The National Electrical Safety Code does apply, as admitted by a representative of Respondent.

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I. LAW AND ARGUMENT

A. THE COMMISSION HAS JURISDICTION.

Respondent argues that the Complaint should be dismissed because the Commission lacks jurisdiction over the subject matter of the Complaint. Motion to Dismiss at 7-17. While it may be true that the trial courts have jurisdiction over contract and common law tort matters, the Commission is . . . vested with the power and jurisdiction to supervise and regulate public utilities . . . , to require all public utilities to furnish their products and render all services exacted by the commission or by law R.C. 4905.04. Accordingly, the General Assembly has created a broad and comprehensive statutory scheme for regulating the business activities of the public utilities. *Kazmaier Supermarket, Inc. v. Toledo Edison Co.* (1991), 61 Ohio St.3d 147, 150, 573 N.E.2d 655. As part of that scheme, the legislature created the Commission and empowered it with the broad authority to administer and enforce the provisions of Title 49. *Id.*

Admittedly, jurisdiction is also vested in the courts of common pleas for actions brought by persons, firms, or corporations who have sustained damages resulting from a public utility's unlawful act or omission to do any act required by law or by the order of the Commission in which treble damages may be awarded. R.C. 4905.61; see also *Milligan v. Ohio Bell Tel. Co.* (1978), 56 Ohio St.2d 191, 383 N.E.2d 575. However, such a suit must be predicated upon a separate finding by the Commission that there was in fact a violation of a specific statute, or noncompliance with a Commission order. *Id.* The claim itself must be brought in common pleas court. *Id.*

Finally, the Supreme Court of Ohio has stated that the Commission has jurisdiction over interpretation of relevant provisions of the Ohio Administrative Code. *State ex rel. Illuminating Co. v. Cuyahoga County Court of Common Pleas* (2002), 97 Ohio St.3d 69, 776 N.E.2d 92.

Here, Muncie seeks the enforcement of the Commission's mandate to stay at least 10 feet away from any overhead power lines and the National Electrical Safety Code (as incorporated into OAC 4901:1-10-06) which requires a minimum safe distance based on voltage, arc factor, and grounding factor. The Commission's broad authority includes the jurisdiction to investigate violations and to enforce such provisions.

Furthermore, Muncie is required, according to the Supreme Court of Ohio, to bring the Complaint in order to obtain a "separate finding by the Commission that there was in fact a violation of a specific statute, or noncompliance with a Commission order." Without such finding the trial court is unable award treble damages as permitted under R.C. 4905.61, which Muncie may be entitled to. See *Milligan v. Ohio Bell Tel. Co.* (1978), 56 Ohio St.2d 191, 383 N.E.2d 575

Therefore the Commission has jurisdiction over the Complaint because (1) the legislature has given the Commission the broad authority to administer and enforce the provisions of Title 49, and (2) the Supreme Court of Ohio has authorized jurisdiction and requires a separate finding by the Commission in order for the trial court to award treble damages of which Muncie may be entitled.

1. The Commission Has Primary Jurisdiction.

Primary jurisdiction does not allocate the power between an administrative agency and a court but resolves who shall make the initial determination. *Lugo v. Simon* (N.D. Ohio 1976), 426 F.Supp. 28, 31. Primary jurisdiction applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a special regulatory scheme, have been placed within the special competence of an administrative body. *State of Ohio ex rel. Banc One Corp. v. Walker* (Dec.9, 1998), 6th Dist.

No. E-97-092, 1998 WL 852554 at *2, quoting *United States v. W. Pacific RR. Co.* (1956), 32 U.S. 59, 64, 77 S.Ct. 161. The doctrine of primary jurisdiction will be utilized when the circumstances and their underlying legal issues would be better ascertained and interpreted by the agency specializing in that area. *Id.* The criteria used in making this determination are the character of the controverted question and the nature of the inquiry necessary for its solution. *Id.* The agency should make the determination in technical matters to maintain some uniformity in agency policy and to take advantage of the agency's expertise. *Id.* citing *Lugo*, supra, 462 F.Supp. at 32. The doctrine of primary jurisdiction comes into play if the use of administrative proceedings will contribute to a meaningful resolution of the lawsuit. *Id.*

The Eighth District Court of Appeals also addressed the doctrine of primary jurisdiction. *The Salvation Army v. Blue Cross & Blue Shield of Northern Ohio* (1993), 92 Ohio App.3d 571, 636 N.E.2d 399. In *Salvation Army* appellant appealed a termination of its contract to the Superintendent of Insurance arguing that appellee failed to comply with cost-control standards set forth in Title 17 of the Ohio Revised Code. *Id.* at 575. Appellant also filed a lawsuit against appellee in the Cuyahoga County Court of Common Pleas alleging two counts of bad faith breach of contract and defamation. *Id.* The trial court dismissed appellant's lawsuit citing lack of subject matter jurisdiction. *Id.* In applying the doctrine of primary jurisdiction, the court of appeals stated that appellant's appeal of the termination of its contract with appellee fell squarely within the scope of review for hearing before the Superintendent of Insurance. *Id.* at 578. Specifically, the court stated "the claim was cognizable by the Ohio Department of Insurance alone as it is charged by Titles 17 and 39 of the Revised Code with regulating the insurance industry." *Id.* In contrast, the court of appeals held the trial court improperly dismissed

appellant's defamation claim which did not require the expertise of the Superintendent of Insurance. *Id.* at 579.

Here, the claim against Respondent was originally cognizable in the court. Muncie's claims against Respondent were grounded in tort (negligence) and contract. However, through discovery it has become evident that resolution of the tort and contract claims in the court will require the resolution of whether Respondent should have, or has, complied with the safety standards contained in the Ohio Administrative Code. Such issues have, under Title 49, been placed with the special competence of the Commission. Further, the allegations in the Complaint pertain to technical matters within the specialized expertise of the Commission. Thus, the Commission should exercise jurisdiction over the matter in order to maintain some uniformity in its policy. Finally, in this instance because technical questions exist the use of administrative proceedings will contribute to a meaningful resolution of the lawsuit. Accordingly, the Commission has primary jurisdiction to determine whether Respondent acted appropriately according to the safety standards promulgated by the Commission or contained in the Ohio Revised Code.

2. **The Commission Has Jurisdiction Over The Complaint Because It Relates To Services Provided By Respondent.**

In the event that the Commission finds it does not have jurisdiction based on the above, the Complaint is properly before the Commission because it relates to services provided by Respondent. R.C. 4905.26 states in part:

Upon complaint in writing against any public utility by any person, firm, or corporation . . . that any rate, fare, charge, toll, rental, schedule, classification, or **service**, or any joint rate, fare, charge, toll, rental, schedule, classification, or **service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted**, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, **or practice affecting or relating to any service furnished by the**

public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof (Emphasis added).

The basis for determining whether the Commission has jurisdiction is a determination regarding whether a matter involves claims which are in essence rate or service-oriented – not whether a claim involves a common practice of the utility. *Kazmaier Supermarket, Inc. v. Toledo Edison Co.* (1991), 61 Ohio St.3d 147, 150, 573 N.E.2d 655. A “charge” is a “[p]rice, cost, or expense” and a “rate” is “[a]n amount paid or charged for a good or service.” *State ex rel. Columbus Southern Power Co. v. Fais* (Jan. 8, 2008), No. 2007-1382, 2008-Ohio-849, citing Black’s Law Dictionary (8 Ed.2004). A “service” is “[a]n intangible commodity in the form of human effort, such as labor, skill, or advice.” *Id.*

Here, the Complaint relates to a service provided by Respondent. The act of de-energizing electric lines is an intangible commodity which required the human effort of representatives of Respondent. Furthermore, Respondent provided skill and advice in the determination of which lines should be de-energized during the house move. Accordingly, when the Commission looks to the underlying matter, it will see that the Complaint relates to services provided by Respondent. It is irrelevant whether participation in a house move or de-energizing electric lines is a common practice of Respondent. Therefore, the Commission has jurisdiction pursuant to R.C. 4905.26 to investigate and preside over the Complaint.

3. **The Expertise Of The Commission In Interpreting The Rules And Regulations Is Necessary For The Resolution Of This Matter.**

The review and determination of the Commission’s provisions is best accomplished by the Commission with its expert staff technicians familiar with the utility commission provisions.

Kazmaier Supermarket, Inc. v. Toledo Edison Co. (1991), 61 Ohio St.3d 147, 150, 573 N.E.2d 655.

The Eleventh District Court of Appeals used the language from *Kazmaier Supermarket* in determining whether the trial court had jurisdiction to hear a particular matter. *State Farm Fire & Casualty Co. v. Cleveland Electric Illuminating Co.* (Jul. 2, 2004), 11th Dist. No. 2003-L-032, 2004-Ohio-3506, 2004 WL 1486664. Ultimately, the court of appeals held that the Commission had jurisdiction over the matter because the determination of liability would necessitate an extensive interpretation of (1) Cleveland Electric Illuminating's tariff, and (2) OAC 4901:1-10-01 et seq. pertaining to the Electric Service and Safety Standards. *Id.* at ¶¶12-14.

Here, resolution of the Complaint requires the Commission's expertise. It is most familiar with the provisions regarding the Electric Service and Safety Standards that Muncie is alleging Respondent violated. Moreover, as stated above the specialized knowledge of the Commission is required to interpret the provisions of the Ohio Administrative Code and make a separate finding as to whether Respondent complied with such before Muncie can proceed with its claims in the trial court. See *Milligan v. Ohio Bell Tel. Co.* (1978), 56 Ohio St.2d 191, 383 N.E.2d 575. Therefore, the Commission has jurisdiction to hear the Complaint because the expertise of the Commission in interpreting the Electric Service and Safety Standards is necessary for the resolution of this matter.

4. The Complaint Is Not Duplicative.

In numerous cases the Courts of this state have held subject matter jurisdiction exists in actions involving the conduct of a utility, which conduct is nonetheless subject to regulation by the Commission. See e.g. *Village of New Bremen v. Public Utilities Commission*, (1921), 103 Ohio St. 23; *Milligan v. Ohio Bell Tel. Co.* (1978), 56 Ohio St.2d. 197; *Southgate Development*

Corp. v. Columbia Gas Transmission Corp. (1976), 48 Ohio St.2d 211. In analyzing the *Village of New Bremen* case, one court of appeals stated, “the courts may not be deprived of jurisdiction where the rights and duties in issue have their source legal relations that are conceptually distinct from the responsibilities that arise under the public utilities regulatory framework[;] [t]hey may not be completely independent.” *Marsh v. Howard Trucking Co.* (May 2, 1980), 2nd Dist. No. 6422, 1980 WL 352506 at *3. The court went on to state, “so long as the findings of the court with regard to the conduct called in question do not directly place in review agency orders or alter the responsibilities that exist under the regulatory framework the court may proceed to a just resolution of the controversy.” *Id.*

Here, there are both rights and duties in issue that have their source in legal relations and issues that arise under the public utilities regulatory framework. Specifically, Muncie’s legal claims are sound in tort and contract, i.e. whether Respondent failed to act with reasonable care and whether Respondent breached the contract it entered into with Muncie and are properly before the trial court. Additionally, Muncie has asserted, in its Complaint before the Commission, that Respondent has failed to comply with the safety standards under the Commission’s regulatory framework. In particular, the claims contained in the Complaint before the Commission relate to the National Electrical Safety Code (as incorporated into the Ohio Administrative Code) which requires a minimum safe distance based on voltage, arc factor, and grounding factor. As discussed above, it is proper to the Commission to investigate that which is within the Commission’s specialized expertise. Muncie has not intended to set its tort and breach of contract claims before the Commission for determination. Accordingly, the Court and the Commission have parallel jurisdiction over Muncie’s claims. Therefore, Respondent’s argument that the Complaint is duplicative is unsupported.

Not only is the Complaint not duplicative, it is necessary in order for Muncie to proceed with its claims in the trial court. As stated above a separate finding by the Commission is necessary before Muncie can attempt to collect treble damages pursuant to R.C. 4905.61. See *Milligan v. Ohio Bell Tel. Co.* (1978), 56 Ohio St.2d 191, 383 N.E.2d 575.

C. MUNCIE HAS STANDING.

Respondent next argues that Muncie has no standing to bring this complaint. Motion to Dismiss at 18. Specifically, Respondent states, “throughout the move, Grange owned the house [and that] [t]he arrangements Muncie made for the move were all made on behalf of Grange.” *Id.* The doctrine of standing requires a party to be in the proper position to assert a claim, and the party's inquiry must be within the zone of interest *intended* to be protected or regulated by the statute. *Taylor v. Academy Iron & Metal Co.* (1988), 36 Ohio St.3d 149, 152, 522 N.E.2d 464, 467-468.

Here, Muncie and Grange entered into an Agreement for Sale and Removal of House in December 2005 , prior to the house move on February 19, 2006. A copy of the Agreement for Sale and Removal of House is attached hereto as Exhibit A. The Agreement for Sale and Removal of House specifically provides that *Muncie* shall remove and sever the house from the real property on or before February 28, 2006. *Id.* at ¶3. Paragraph 3 further states that *Muncie* shall be responsible for all costs and expenses incurred in connection with removing the house. *Id.* Moreover, the Agreement for Sale and Removal of House states that Grange shall convey title to the house to Muncie, free and clear of all encumbrances, on the removal date. *Id.* at ¶4. Finally, pursuant to the Risk of Loss provision in the Agreement for Sale and Removal of House, *Muncie*, rather than Grange, was to bare the risk of loss or damage to the house from and after the date of the first modifications to the house were made in preparation of removal. *Id.* at ¶9.

Accordingly, Muncie is squarely within the zone of interest *intended* to be protected and has standing to assert the Complaint. Therefore, Respondent's standing argument is without merit.

D. THE NATIONAL ELECTRICAL SAFETY CODE APPLIES.

Finally, Respondent argues that the clearance provisions of the National Electrical Safety Code are not applicable to a house being moved on a city street. Motion to Dismiss at 18-20. In support of this argument, Respondent cites to a non-binding Mississippi Supreme Court case and the proposition that the Commission has previously granted a waiver of certain Federal Motor Carrier Safety Rules. *Id.* If the Commission were to adopt Respondent's argument, the result would be that no safety standards apply to a house move. Such result is contradictory to the public's interest in maintaining safe conditions on its city streets and in the provision of electric service. Given the seriousness of such issues, it is unsurprising that the Commission elected to incorporate the National Electrical Safety Code into the Ohio Administrative Code. Accordingly, the National Electrical Safety Code must apply to this case.

Respondent further states that the National Electrical Safety Code does not apply to a house move because it does not commonly occur. Motion to Dismiss at 19. Although not a daily activity, a representative of Respondent, Orval Minniear, testified that he has personally participated in over 30 house moves in his 39 years in the business. Minniear Dep. at 29; attached hereto as Exhibit B.¹ Surely, there has to be some sort of safety standard addressing minimum distance which applies to an event that takes place approximately once a year. Indeed, **the Commission has selected which standards to apply by incorporating the National Electrical Safety Code into the Ohio Administrative Code.**

¹ Mr. Minniear's deposition transcript includes more than 60 pages. Accordingly, only the relevant pages are attached to this brief. Muncie will provide a complete copy of the transcript upon the Commission's request.

Last, of note, is Mr. Minniear's testimony the National Electrical Safety Code "establishes the minimum [distance] you need to stay away from an overhead power line," in the event of a house move. Minniear Dep. at 47. Therefore, because (1) the National Electrical Safety Code is the only set of standards related to the Complaint; and (2) Respondent's representative has acknowledged that the National Electrical Safety Code establishes the minimum safe distance, Respondent's argument is without merit and the National Electrical Safety Code is applicable.

II. CONCLUSION

As more fully set forth above, Respondent's Motion to Dismiss must be denied because the Commission has jurisdiction (1) to hear matters relating to the rules and regulations promulgated by such the Commission; (2) because the allegations in the Complaint relate to services provided by Respondent; (3) because the expertise of the Commission is necessary for the resolution of this matter; and (4) because the Complaint is not duplicative. Further, Respondent's standing argument is without merit because Muncie owned the house and carried the risk of loss and damage to the house at the time of the move. Finally, the National Electrical Safety Code does apply, as admitted by a representative of Respondent. Therefore, Muncie respectfully demands that the Commission investigate and preside over the Complaint.

Respectfully submitted,
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Attorneys for Complainant

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was served by

U.S. Mail this 11th day of April, 2008 upon the following:


Marvin I. Resnik

American Electric Power Service Corp.

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Attorney for Respondent



Darcy A. Burdette (0082159)

AGREEMENT FOR SALE AND REMOVAL OF HOUSE

THIS AGREEMENT FOR SALE AND REMOVAL OF HOUSE (this "Agreement") is entered into and made this ____ day of December, 2005 by and between **Grange Mutual Casualty Company**, an Ohio not for profit corporation having its principal place of business at 650 South Front Street, Columbus, OH 43206 ("Seller") and **Muncie D'Elia Development, LLC**, an Ohio limited liability company having its principal place of business at 769 South Third Street, Columbus, Ohio 43206 ("Buyer").

RECITALS:

Seller is the owner of certain real property commonly known as 715 South High Street, Columbus, Ohio (the "Real Property"). Situated upon the Real Property is a residential structure containing certain fixtures and personal property as set forth on Exhibit A (which exhibit is to be completed by Seller and Buyer during a walk through of the residential structure at the time of the execution of this document) (the structure, the fixtures and personal property on Exhibit A are hereinafter referred to collectively as the "House");

Buyer desires to purchase the House and to remove the same from the Real Property and place the House on other real estate to be sold to Buyer by Seller (the "New Lot") pursuant to that certain Purchase Contract by and between Buyer and Seller dated of even date herewith (the "Purchase Contract"). Seller is willing to sell the House and to have the same removed from the Real Property and placed on the New Lot pursuant to the terms of the Purchase Contract and on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer intending to be legally bound, agree as follows:

1. PURCHASE AND SALE. Seller shall sell and convey to Buyer and Buyer shall purchase from Seller the House.

2. PURCHASE PRICE; ESCROW. The Purchase Price to be paid by Buyer to Seller for the House is Fifty-Five Thousand Dollars (\$55,000.00) payable in cash or by cashier's check at the time of execution of this document, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged. Notwithstanding the foregoing, the Purchase Price shall be held by the title company issuing the title insurance commitment under the Purchase Contract in an interest-bearing account with all accrued interest to be paid to Seller. In the event any of the contingencies set forth in Section 22 of this Agreement are not satisfied or waived, the Purchase Price shall be promptly returned to Buyer, including any interest earned thereon. If the removal and relocation of the House is not completed solely because of a default of Buyer, the Purchase Price shall be paid to Seller as liquidated damages. If the removal and relocation of the House is successfully completed as

EXHIBIT

A

provided herein, the Purchase Price shall be paid to Seller at the closing of the Purchase Contract. In the event of a dispute over disposition of the Purchase Price, which dispute relates to a default or alleged default only, such title company shall retain the Purchase Price in the account referenced above until (a) Buyer and Seller give such title company mutual written instructions with respect thereto or (b) disposition has been ordered by a final court order.

3. REMOVAL AND SEVERANCE. Buyer shall remove and sever the House from the Real Property in a careful, safe and lawful manner on or before the 28th day of February, 2006, unless otherwise mutually agreed by the parties in writing and Seller hereby grants Buyer and Buyer's agents the right to enter upon the Real Property, as reasonably necessary, for purposes of accomplishing such removal and severance. In connection with said removal, the parties further agree as follows:

a. Costs and Expenses: Buyer shall be responsible and pay for all costs and expenses incurred in connection with removing the House from the Real Property. Notwithstanding the foregoing, Seller shall be responsible for the following expenses:

- i. The cost of employing the moving contractor (Dingey Movers Inc.), to the extent that such cost does not exceed five percent (5%) over One Hundred Ninety-One Thousand and Nine Hundred Dollars (\$191,900.00); and
- ii. The cost of obtaining all necessary moving permits, police and traffic services and associated items, to the extent that such cost does not exceed Sixty Thousand Dollars (\$60,000.00). Notwithstanding the foregoing, if the cost of obtaining all necessary moving permits, police and traffic services and associated items exceeds this amount, Seller shall pay fifty percent (50%) of such excess cost up to Five Thousand Dollars (\$5,000.00).

In complying with its obligations under this paragraph, Seller shall pay the costs and expenses identified above directly to the contractor(s) and/or other parties (collectively, the "Contractor") engaged by Buyer to provide the services. Such payment shall be made not later than thirty (30) days after Buyer and/or the Contractor has delivered to Seller an invoice or other documentation reasonably acceptable to Seller evidencing such costs and expenses.

b. Governmental Authority: Buyer shall comply with all lawful requirements of all laws, ordinances, rules or regulations and shall obtain all requisite consents, approvals, and permits from any federal, state, local governmental or other regulatory authority (collectively, the "Government Requirements"), which are required to be obtained in connection with the

consummation of the transactions contemplated hereunder and shall be responsible for ensuring that the Contractor does same.

- c. Damage and Repairs: Buyer shall repair any and all damage caused to the surface or subsurface of the Real Property by said removal, including without limitation, damage to or interference with any utility lines and sanitary and storm sewage lines.
- d. Restoration of Real Property: Seller shall be responsible for filling any basement remaining after the removal of the House in accordance with all applicable Government Requirements. Buyer shall remove all debris generated by the removal of the House from the Real Property.
- e. Removal by Buyer: Notwithstanding anything in this Agreement to the contrary, in the event Buyer shall, through no fault of Seller, fail to remove the House from the Real Property on or before February 28, 2006, Seller may, in its sole discretion, take any or all of the following actions: (i) if applicable, declare the Bill of Sale executed and delivered pursuant to Section 7 hereof to be null and void; (ii) retake possession of the House; (iii) remove or otherwise dispose of the House; (iv) declare its obligations to make the payments set forth in Section 3(a) hereof to be null and void in which case, (a) if Seller has made any of these payments, Buyer shall repay Seller immediately, and (b) Seller shall be entitled to retain all sums paid to Seller by Buyer hereunder; and (v) if applicable, require that Buyer convey back to Seller the real property which was transferred to it by Seller pursuant to the Purchase Contract, upon the same terms and conditions contained in the Purchase Contract, except Seller will become the Buyer and Buyer shall become the Seller.
- f. Notification. Buyer shall notify Seller, in writing, of the date upon which Buyer intends to remove the House (the "Removal Date"), such notification to be delivered to Seller not less than five (5) days prior to the Removal Date.
- g. Contractor Services. It is acknowledged by the parties hereto that the services for which payment will be provided pursuant to Section 3(a)(i) hereof shall include the following items: (i) the demolition of the garage structures located upon the New Lot; (ii) the relocation to the New Lot of the bricks which are to be recycled upon the demolition of the porches which are currently attached to the House; and (iii) the physical relocation of the House to the New Lot.

4. TITLE. Seller warrants that it is the owner of the House, and that it shall sell and convey title to the House to Buyer, free and clear of all encumbrances, on the Removal Date.

5. PLACEMENT OF HOUSE. As a condition of the sale of the House to Buyer and as part of the consideration from Buyer to Seller, Buyer hereby covenants to place the House on the foundation Buyer has or will construct on the New Lot. Buyer shall have no right to place the House on any other real estate other than the New Lot. Buyer shall be responsible and pay for all costs and expenses incurred in connection with the excavation of the New Lot and the construction of the foundation thereon. Notwithstanding the foregoing, Seller shall pay directly to the Contractor undertaking such construction and excavation such costs and expenses to the extent that such costs and expenses do not exceed five percent (5%) over Forty-Seven Thousand Five Hundred Dollars (\$47,500.00). Such payment shall be made not later than thirty (30) days after Buyer and/or the Contractor has delivered to Seller an invoice or other documentation reasonably acceptable to Seller evidencing such costs and expenses.

6. EXCLUSION OF WARRANTIES. Buyer acknowledges and agrees that the House is old, in a state of disrepair, may not be structurally sound and may have many defects. Accordingly, Buyer agrees as follows:

THE HOUSE IS BEING CONVEYED "AS IS, WHERE IS, AND WITH ALL FAULTS" WITHOUT ANY REPRESENTATION OR WARRANTY BY SELLER. SELLER HAS NOT MADE AND IS NOT MAKING ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE HOUSE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING QUALITY OF CONSTRUCTION, WORKMANSHIP, CONDITION, STATE OF REPAIR, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY OF DIMENSIONS, WHETHER THE HOUSE IS STRUCTURALLY SOUND, IN GOOD CONDITION, OR IN COMPLIANCE WITH APPLICABLE CITY, COUNTY, STATE OR FEDERAL STATUTES, CODES OR REGULATIONS, OPERATION OF MECHANICAL SYSTEMS, EQUIPMENT AND FIXTURES, SUITABILITY OF SOIL OR GEOLOGY, ABSENCE OF DEFECTS, THE FINANCIAL LIABILITY OF THE HOUSE OR THE COMPLETENESS OR ACCURACY OF ANY BOOKS OR RECORDS OF THE SELLER PERTAINING TO THE HOUSE, AND BUYER ACKNOWLEDGES THAT BUYER ACCEPTS THE HOUSE WITHOUT RELYING UPON ANY REPRESENTATION OR WARRANTY BY SELLER OR BY ANY OTHER PERSON AND IS BUYING THE HOUSE BASED SOLELY UPON BUYER'S OWN INSEPTIONS, INVESTIGATION AND FINANCIAL ANALYSIS OF THE HOUSE.

7. BILL OF SALE. Upon the Removal Date, Seller shall execute and deliver to Buyer a bill of sale, in substantially the same form as set forth in Exhibit B attached hereto, conveying to Buyer the House.

8. FURTHER ACTIONS AND ASSURANCES. Buyer and Seller shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged or delivered, all such additional actions, documents and assurances as may be reasonably required by the other

party in order to consummate and effectuate the transactions set forth herein in accordance with the provisions of this Agreement.

9. RISK OF LOSS OR DAMAGE. Buyer shall bear the risk of loss or damage to the House from and after the date that Buyer or Contractor first begins to make modifications to the House in preparation for its removal. In the event that any physical damage or loss to the House shall occur after the execution of this Agreement, but prior to removal of the House, Buyer shall proceed nevertheless to remove the House in accordance with the terms and provisions of this Agreement unless such damage is of such an extent or degree that it precludes removal of the House.

10. INSURANCE. Prior to the commencement of the removal of the House, Buyer shall obtain from Contractor and deliver to Seller a certificate of, and thereafter cause to be kept in full force and effect to and until the completion of the removal of the House and its relocation, commercial public liability insurance and special form property insurance issued by a company licensed to do business in the State of Ohio and satisfactory to Seller, certifying coverage of Contractor acceptable in all respects to Seller, which certificate shall name Seller as an additional insured and shall provide that the policy shall not be canceled or modified until thirty (30) days after written notice to Seller.

11. UTILITIES. If any utilities remain connected to the House, Seller shall, immediately upon execution of this Agreement, request that said utilities servicing the House be disconnected.

12. RELEASE; DISCHARGE. In exchange for the consideration set forth in this Agreement, Buyer, on behalf of itself and its past, present and future officers, directors, partners, stockholders, agents, servants, representatives, employees, attorneys, subsidiaries, divisions, affiliates, parents, predecessors and successors in interest and assigns, does hereby release and discharge Seller, its past, present and future officers, directors, partners, stockholders, agents, servants, representatives, employees, attorneys, subsidiaries, divisions, affiliates, parents, predecessors and successors in interest and assigns (collectively, the "Released Persons") from any and all charges, claims, demands, judgments, actions, causes of action, damages, expenses, costs, attorneys fees and liabilities of any kind whatsoever, whether known or unknown, vested or contingent, in law, equity or otherwise, that they have ever had or now have against the Released Persons for and on account of the acquisition of the House, the movement of the House, the renovation of the House and the use and operation of the House and any matter related thereto whatsoever that occurs after the earlier to occur of (a) the date of the Closing of the Purchase Contract, or (b) the date that Buyer or Contractor first begins to make modifications to the House in preparation for its removal.

13. INDEMNIFICATION. Buyer shall indemnify the Released Persons and hold them harmless against any threatened, pending or completed civil, criminal, administrative or investigative action, suit or proceeding brought by any person, including any and all costs, claims, damages, losses, judgments, fines and expenses, including, without limitation, reasonable attorneys fees, filing fees, court fees, and transcript costs, actually and reasonably incurred by the Released Persons in connection with such action, suit or proceeding, that arise out of the

acquisition of the House, the movement of the House, the renovation of the House and any matter related thereto whatsoever, that arises after the earlier to occur of (a) the date of the Closing of the Purchase Contract, or (b) the date that Buyer or Contractor first begins to make modifications to the House in preparation for its removal.

14. BROKERS, FINDERS AND OTHERS. Seller and Buyer each warrant and represent to the other that, other than with respect to Michael Peppe ("Broker"), it has had no compensable dealings, negotiations, agreements, consultations or other transactions with any broker, finder or other intermediary in respect of the House or this Agreement, and that no person is entitled to any brokerage fee, commission or other payment in respect of this Agreement, the Purchase Contract, the transactions contemplated thereby and/or the House, arising from agreements, arrangements or undertakings made or affected by it with any third party. Notwithstanding the foregoing, Buyer and Seller acknowledge that Broker shall be paid a fee of Three Thousand Dollars (\$3,000.00) for the services rendered by Broker in connection with the sale of the House. Seller shall be responsible for the cost of such fee. Buyer hereby agrees to indemnify and hold Seller harmless from and against any fee of Broker in excess of Three Thousand Dollars (\$3,000.00). Buyer and Seller further agree to indemnify and hold each other harmless from and against any and all liability, causes of action, claims, demands, costs and expenses (including reasonable attorneys' fees) arising from or accruing in connection with any fee or commission sought, claimed or recovered by any broker or agent, as a result of the act or omission of the indemnifying party.

15. NOTICES. Whenever in this Agreement it shall be required or permitted that notice be given or served by either party hereto on the other, such notice shall be in writing and shall be deemed served when either delivered in person to the following designated agents for that purpose, or deposited in the United States Mail, by certified or registered mail, postage prepaid, addressed to the party to be notified, with return receipt requested, when the return receipt is signed or refused. Any notice to be served on Seller shall be addressed as follows:

Grange Mutual Casualty Company
650 South Front Street
Columbus, OH 43206
Attention: Mark C. Russell
Vice President & CAO

with a copy to:

Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street, P.O. Box 1008
Columbus, OH 43216-1008
Attention: George L. Jenkins, Esq.

or such other address as Seller may hereinafter designate by written notice to Buyer. Any notice to be served on Buyer shall be addressed as follows:

Muncie D'Elia Development, LLC
Attn: Julie D'Elia
769 South Third Street
Columbus, Ohio 43206

with a copy to:

Campbell Hornbeck Chilcoat & Veatch, LLC
Attn: David B. Hornbeck, Esq.
7650 Rivers Edge Drive, Suite 100
Columbus, Ohio 43235

or such other address as Buyer may hereinafter designate by written notice to Seller.

16. ENTIRE AGREEMENT; AMENDMENTS. This Agreement and the Purchase Contract, including all exhibits attached thereto and referred to therein, constitute the entire agreement between the parties with respect to the subject matter hereof; they supersede all previous agreements and understandings, if any, between the parties; no oral or implied representations or understandings shall vary their terms; and they may not be amended except by written instrument executed and delivered by the parties.

17. SUCCESSOR AND ASSIGNS; ASSIGNMENT. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, including successive as well as immediate successors and assigns. Buyer shall have no right to assign all or any interest which it may have in this Agreement without the prior written consent of Seller, which may be withheld for any reason or no reason.

18. GOVERNING LAW. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Ohio.

19. SEVERABILITY. The invalidity or unenforceability of any provision of this Agreement in any particular respect shall not affect the validity or enforceability of any other provision of this Agreement or of the same provision in any other respect. If the agreement can be interpreted in more than one way, and one interpretation would render the provision valid, this interpretation shall be the proper interpretation.

20. SURVIVAL. Notwithstanding any presumption to the contrary, all representations, covenants, and agreements contained in this Agreement shall survive the delivery of the Bill of Sale and the removal of the House from the Real Property and shall continue in full force and effect.

21. INDEPENDENT CONTRACTOR. Buyer is an independent contractor with respect to its obligations under this Agreement. While Buyer shall accept reasonable direction from Seller, Buyer shall be solely responsible for the manner and ways in which it will perform its obligations under this Agreement.

22. CONTINGENCIES. Notwithstanding anything in this Agreement to the contrary, Seller and Buyer specifically acknowledge and agree that this Agreement and each and every right, obligation and duty of the parties hereunder is contingent upon both (a) the successful closing of the Purchase Contract and (b) satisfying any Government Requirement which may be necessary to accomplish the removal and relocation of the House to the New Lot. In the event that any of the foregoing contingencies is not met, this Agreement shall automatically terminate and be of no further force or effect.

23. SEWER UPGRADE. As a condition of granting the lot split contemplated by the Purchase Contract, the City of Columbus (the "City") has requested that the sanitary sewer line which currently serves the New Lot (and other property adjacent thereto) be upgraded to comply with City specifications and that the upgraded line be dedicated to the City. Pursuant to this request, Seller has entered into that certain Sewer Agreement dated November 30, 2005 with the City whereby Seller has agreed to comply with this request. Buyer shall be responsible for hiring a contractor to undertake the work contemplated by the Letter Agreement and shall pay for all costs incurred in connection therewith. Notwithstanding the foregoing, Seller shall be responsible for fifty percent (50%) of the cost associated therewith up to Twenty Thousand Dollars (\$20,000.00), such payment to be made not later than thirty (30) days after Buyer has delivered to Seller an invoice or other documentation reasonably acceptable to Seller evidencing such costs.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement on the day and year first above written.

SELLER:

Grange Mutual Casualty Company

By: [Signature]

(signature)

Daniel T. Reuch

(printed name)

Its: V.P. & Secretary

(title)

BUYER:

Muncie D'Elia Development, LLC

By: [Signature]

Julia D'ELIA
(printed name)

Its: TRABUHAN

(title)

EXHIBIT A

List of Fixtures and Personal Property included as part of the "House" located at 715 S High Street, Columbus, Ohio:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

SELLER:

Grange Mutual Casualty Company

By: _____
(signature)

(printed name)

Its: _____
(title)

BUYER:

Muncie D'Elia Development, LLC

By: _____

(printed name)

Its: _____
(title)

EXHIBIT B

To Agreement for Sale and Removal of House

Bill of Sale

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that **Grange Mutual Casualty Company**, having its principal place of business at 650 South High Street, Columbus, Ohio 43206 ("Grantor") in consideration of the sum of ONE DOLLAR (\$1.00) paid to it by **Muncie D'Elia Development, LLC**, having its principal place of business at 769 South Third Street, Columbus, Ohio 43206 ("Grantee"), and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to the said Grantee, its successors and assigns, the following described personal property:

the residential structure and the fixtures and personal property contained therein set forth more particularly on Exhibit A, attached hereto (collectively, the "House").

This conveyance is limited to the House and excludes all other improvements upon the real property upon which the House is located and all parts of said real property, it being the intent and agreement of Grantor and Grantee that such House shall be severed from and removed from said real property by Grantee in accordance with the terms of a certain Agreement for Sale and Removal of House (the "Agreement") between Grantor and Grantee dated of even date herewith, a copy of which is attached hereby as Exhibit B. All terms of the Agreement are specifically incorporated herein and made a part hereof and shall survive the execution and delivery of this Bill of Sale, including but not limited to paragraph 3(e) of the Agreement, pursuant to which this Bill of Sale may become void in the event Grantee fails to perform certain obligations under the Agreement.

THE HOUSE IS BEING CONVEYED "AS IS, WHERE IS, AND WITH ALL FAULTS" WITHOUT ANY REPRESENTATION OR WARRANTY BY SELLER. SELLER HAS NOT MADE AND IS NOT MAKING ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE HOUSE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING QUALITY OF CONSTRUCTION, WORKMANSHIP, CONDITION, STATE OF REPAIR.

SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY OF DIMENSIONS, WHETHER THE HOUSE IS STRUCTURALLY SOUND, IN GOOD CONDITION, OR IN COMPLIANCE WITH APPLICABLE CITY, COUNTY, STATE OR FEDERAL STATUTES, CODES OR REGULATIONS, OPERATION OF MECHANICAL SYSTEMS, EQUIPMENT AND FIXTURES, SUITABILITY OF SOIL OR GEOLOGY, ABSENCE OF DEFECTS, THE FINANCIAL LIABILITY OF THE HOUSE OR THE COMPLETENESS OR ACCURACY OF ANY BOOKS OR RECORDS OF THE SELLER PERTAINING TO THE HOUSE, AND BUYER ACKNOWLEDGES THAT BUYER ACCEPTS THE HOUSE WITHOUT RELYING UPON ANY REPRESENTATION OR WARRANTY BY SELLER OR BY ANY OTHER PERSON AND IS BUYING THE HOUSE BASED SOLELY UPON BUYER'S OWN INSPECTIONS, INVESTIGATION AND FINANCIAL ANALYSIS OF THE HOUSE.

To have and to hold the same unto Grantee, its successors and assigns forever.

The said Grantor does hereby covenant with Grantee that Grantor is the true and lawful owner of the House hereby sold and has full power to sell and convey the same.

IN WITNESS WHEREOF, the said Grantor has caused this Bill of Sale to be executed this ____ day of _____, 2005.

Grange Mutual Casualty Company

By: _____
(signature)

(printed name)

Its: _____
(title)

STATE OF _____
COUNTY OF _____ ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of Grange Mutual Casualty Company, an Ohio not for profit corporation, on behalf of the corporation.

Notary Public

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

- - -

Phil Jonassen Movers, Inc.,)
Plaintiff,)
vs.) Case No. 06-CV-15302
Dingey Movers, Inc.,) Judge Pfeiffer
et al.,)
Defendants,)
vs.)
Columbus Southern Power)
Company, et al.,)
Third-Party Defendants,)
vs.)
Muncie/D'elia Development,)
LLC,)
Fourth-Party Defendants.)

- - -

EXAMINATION OF ORVAL MINNIEAR
Friday, November 9, 2007

- - -

EXHIBIT

B

1 A. Yes.

2 Q. And what is Monty Dixon's position?

3 A. Supervisor of engineering.

4 Q. Orval, you have been with AEP for about
5 39 years. How many house moves would you say you
6 have been involved in?

7 A. Probably over 30.

8 Q. And let's say in the last two years, how
9 many house moves would you say you have been
10 involved in?

11 A. Five probably.

12 Q. And in addition to house moves, I don't
13 know if there is such a thing as a building move,
14 but are you involved in building moves as well?

15 A. That would be the same as a house.

16 Q. It would be the same. Okay. So you
17 don't differentiate whether it's a house or maybe
18 a small office building or something?

19 A. No.

20 Q. So the total number of moves of
21 structures that you have been involved in is about
22 30 over the last 39 years?

23 A. House moves. Substation transformer
24 moves are different than house moves.

25 Q. Are you saying that you can move an

1 get within probably a foot of the wire.

2 Q. What about just a normal overhead line?

3 A. Well, it depends on where you are at.

4 Q. The line that runs parallel to High

5 Street on the east side of the street, we

6 established that is the 13,200 volt line.

7 A. Uh-huh.

8 Q. So how far would you want to stay away

9 from that line to make sure no arc occurs?

10 A. I would have to go by the code. We don't
11 go by arc factor.

12 Q. What does that mean, you don't go by arc
13 factor?

14 A. The National Safety Code is a minimum
15 requirement, and we are required to keep that
16 minimum requirement at all times or greater.

17 Q. So the National Safety Code establishes
18 the minimum that you need to stay away from an
19 overhead power line; is that what you are saying?

20 A. Yes.

21 Q. Okay. And it does contain some
22 information pertaining to how far an arc can
23 occur; is that what you are saying? You don't
24 understand and I don't expect you to, but you
25 don't know what that is, but there is information

A F F I D A V I T

- - -

STATE OF _____,)

) SS:

COUNTY OF _____,)

Orval Minniear, having been duly placed
under oath, deposes and says that:

I have read the transcript of my
deposition taken on Friday, November 9, 2007, and
made all necessary changes and/or corrections as
noted on the attached correction sheet, if any.

Orval Minniear

Placed under oath before me and
subscribed in my presence this _____ day of

_____, _____.

Notary Public

My Commission Expires: _____.

- - -

C E R T I F I C A T E

- - -

State of Ohio,)
) SS:
County of Franklin,)

- - -

I, Tammy L. Luchini, Professional Court
Reporter and Notary Public in and for the State of
Ohio, hereby certify that the foregoing is a true
and accurate transcript of the deposition
testimony, taken under oath on the date
hereinbefore set forth, of Orval Minniear.

I further certify that I am neither
attorney or counsel for, nor related to or
employed by any of the parties to the action in
which the deposition was taken, and further that I
am not a relative or employee of any attorney or
counsel employed in this case, nor am I
financially interested in the action.

Tammy L. Luchini,
Professional Court
Reporter and Notary
Public in and for the
State of Ohio

My Commission Expires: June 14, 2009

*** CAUTION ***

This certification bears an original signature in
nonreproducible ink. The foregoing certification
of the transcript does not apply to any
reproduction of the same not bearing the signature
of the certifying court reporter. McGinnis &
Associates, Inc. disclaims responsibility for any
alterations which may have been made to the
noncertified copies of this transcript.

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