

EARNEST MONEY CONTRACT
[COMMERCIAL BUILDING]

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This is a Contract whereby _____ ("**Seller**"),
agrees to sell to _____ ("**Buyer**"),

who agrees to purchase, upon the terms and provisions hereof, the following described real property:

together with all and singular the rights and appurtenances pertaining to the real property, including all improvements, fixtures attached to such real property, and any right, title, and interest of Seller in and to adjacent streets, easements, alleys, or rights-of-way (**all the real property, rights, and appurtenances being referred to as the "Property"**).

Article 1

1.1 Sales/Purchase Price. The total sales/purchase price is \$ _____ payable to Seller in cash or immediately available funds at closing.

1.2 Earnest Money. Upon the execution of this Contract by Seller, as a condition precedent to the enforcement of this Contract, Buyer shall deposit \$ _____ (**the "Earnest Money"**) in immediately available funds with _____ (**the "Title Company"**). The Title Company's address is _____

Telephone No. (____) _____, and Facsimile No. (____) _____. The Title Company is not required to deposit the Earnest Money in an interest bearing account. At closing, the Earnest Money will be applied to the sales/purchase price.

1.3 Closing Date. Closing will be on or before _____, _____, at the offices of the Title Company.

1.4 No Financing. This Contract is **NOT** contingent upon Buyer obtaining financing to purchase the Property.

Article 2

2.1 Title Commitment. If a title insurance commitment covering the Property ("**Commitment**") is available on the date of this Contract, Buyer acknowledges receipt of the Commitment. Buyer will accept title to the Property as shown in the Commitment. All

exceptions to title shown on Schedule B to the Commitment are "**Permitted Exceptions**". On or before closing, all exceptions to title in Schedule C to the Commitment applicable to Seller will be satisfied by Seller so that they are not exceptions to title in the Title Policy (defined below).

If a Commitment is not available on the date of this Contract, Seller will cause the Title Company to issue a Commitment as soon as possible and send it to Buyer at Buyer's address set forth below.

- 2.2 Title Insurance. Buyer will pay the cost of an owner policy of title insurance (**the "Title Policy"**) issued by the Title Company in the amount of the sales/purchase price dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy subject to the Permitted Exceptions.
- 2.3 Conveyance. At closing, Seller will convey the Property to Buyer by a special warranty deed subject to the Permitted Exceptions.
- 2.4 Seller's Closing Costs. Seller shall pay the following closing costs: (i) preparation of special warranty deed, (ii) title curative costs, (iii) tax certificates, (iv) one-half of the escrow fees, (v) Seller's attorney's fees, and (vi) other expenses provided herein.
- 2.5 Buyer's Closing Costs. Buyer shall pay the following closing costs: (i) one-half of the escrow fees, (ii) recording special warranty deed, (iii) Buyer's attorney's fees, and (iv) other expenses provided herein.
- 2.6 Ad Valorem Taxes. Ad valorem taxes on the Property for _____ and prior years will be paid by Seller. Taxes for _____ will be prorated to the closing date.
- 2.7 Escrow. The Earnest Money is deposited with the Title Company with the understanding that the Title Company (i) is not a party to this Contract and does not assume or have any liability for performance or non-performance of any party to this Contract, (ii) has the right to require from all parties a written release of liability of the Title Company which authorizes the disbursement of the Earnest Money, and (iii) is not liable for interest or other charge on the funds held. If any party unreasonably fails to deliver promptly the document described in (ii) above, then that party will be liable for attorney's fees. Any refund or payment of the Earnest Money under this Contract will be reduced by the amount of any actual expenses incurred on behalf of the party receiving the Earnest Money, and the Title Company will pay the same to the creditors entitled thereto.
- 2.8 Auctioneer's Commission. Assiter & Associates, LLC, a Texas limited liability company, served as the auctioneer and real estate broker ("**Auctioneer**") and has conducted the auction to sell the Property. Seller shall pay Auctioneer, in Randall County, Texas, a commission as set forth in a separate agreement. The Title Company is authorized to disburse Auctioneer's fee from Seller's funds.
- 2.9 Notice to Buyer. According to the terms of the Real Estate License Act of Texas, you, as Buyer, are advised by Auctioneer that Buyer should have the abstract covering the Property examined by an attorney of Buyer's selection, or be furnished with or obtain an owner policy of title insurance.
- 2.10 Seller's Remedies. Upon failure of Buyer to comply herewith, Seller may either:

- (a) cancel this Contract and thereupon the Earnest Money shall be applied first to pay the cost of advertising and direct expenses incurred in connection with the auction and the balance, if any, one-half to Auctioneer and one-half to Seller, and there will be no further obligation to be borne, performed, or enforced by any party hereto; or,
- (b) seek other relief as may be provided by law.

2.11 Buyer's Remedies. If Seller fails to comply herewith for any reason, except Buyer's default, Buyer may either:

- (a) cancel this Contract and thereupon the Earnest Money shall be returned to Buyer and there will be no further obligation to be borne, performed, or enforced by any party hereto; or,
- (b) enforce specific performance hereof; or,
- (c) seek other relief as may be provided by law.

2.12 Attorney's Fees. Any party to this Contract or the Title Company who prevails in any legal proceeding brought under or with relation to this Contract or transaction will be additionally entitled to recover court costs and reasonable attorney's fees.

Article 3

3.1 Examination of Property. **BUYER HAS EXAMINED THE PROPERTY TO BUYER'S COMPLETE SATISFACTION AND KNOWS ITS CONDITION. IN PURCHASING THE PROPERTY, BUYER RELIES ONLY ON BUYER'S EXAMINATION AND JUDGMENT, NOT ON THE REPRESENTATION OF SELLER OR ANY OTHER PERSON AS TO VALUE, FUTURE VALUE, CONDITION, SIZE, AGE, USE, ENVIRONMENTAL CONDITION, OR ANY OTHER MATTER. BUYER ACKNOWLEDGES THAT IN SELLING THE PROPERTY, SELLER MAKES NO WARRANTIES OTHER THAN TITLE. THE PROVISIONS OF THIS PARAGRAPH WILL SURVIVE THE CLOSING.**

3.2 Property Condition. **BUYER IS PURCHASING THE PROPERTY ON AN "AS IS" BASIS, WITH ALL FAULTS AND PROBLEMS OF ANY KIND AND NATURE, KNOWN OR UNKNOWN, PATENT OR LATENT, OF A PHYSICAL, ENVIRONMENTAL, OR LEGAL CONCERN, OR OTHERWISE. THE PURCHASE PRICE REFLECTS THE EXISTING CONDITION OF THE PROPERTY AND ANY DAMAGE OR DETRIMENT BUYER MAY SUFFER BY REASON OF THE CONDITION OF THE PROPERTY IS FULLY COMPENSATED FOR BY THE PURCHASE PRICE. THE PROVISIONS OF THIS PARAGRAPH WILL SURVIVE THE CLOSING.**

Article 4

4.1 1031 Deferred Exchange.

- (a) Buyer is aware that Seller may perform a 1031 Tax Deferred Exchange. Buyer agrees to cooperate in the exchange. Seller will hold Buyer

harmless from all claims, liabilities, costs, or delays in time resulting from the exchange.

- (b) Seller is aware that Buyer may perform a 1031 Tax Deferred Exchange. Seller agrees to cooperate in the exchange. Buyer will hold Seller harmless from all claims, liabilities, costs, or delays in time resulting from the exchange.

4.2 Possession. Possession of the Property will be delivered to Buyer at closing and funding.

4.3 Notices. Any notice, tender, or delivery to be given hereunder must be in writing and will be effected either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Notice will be deemed received upon personal delivery or two days after mailing. Mailed notices must be addressed as set forth herein, but each party may change his address by written notice according to this paragraph.

4.4 Time. Time is of the essence of this Contract.

4.5 Mutual Understanding. Seller and Buyer have carefully read and understand the effect of this Contract. Each of the parties has had the assistance of separate counsel in carefully reviewing, discussing, and considering all the terms of this Contract. Counsel for each of the parties has read and considered this Contract and advised their clients regarding the execution of the same. This Contract will be construed as if prepared by counsel of both Seller and Buyer.

4.6 Only Agreement. This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

4.7 Non-Foreign Person Affidavit. At closing, Seller shall deliver to Buyer a duly executed affidavit stating (i) Seller's United States Taxpayer Identification Number for federal income tax purposes and (ii) that Seller is not a "foreign person" within the meaning of Section 1445, et seq., of the Internal Revenue Code.

4.8 Parties Bound. This Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

4.9 Signature by Facsimile. This Contract will be deemed fully executed by all parties if it bears the signatures of all parties. A FAX of the signature of a party will be binding on the signing party and delivery of this Contract by FAX will constitute delivery of this Contract for all purposes and will thus be binding on the party sending the FAX.

4.10 Counterparts. This Contract may be executed in counterparts and, if so executed, shall be valid, binding, and have the same effect as if all the parties hereto actually joined in and executed one and the same document.

4.11 Paragraph Headings. Paragraph headings are included only for convenience and are not to be used to construe any provision of this Contract.

4.12 Gender. Whenever the context requires, the singular includes the plural, the plural the singular, and the use of any gender includes all genders.

4.13 Consult Your Attorney. **AUCTIONEER CANNOT GIVE LEGAL ADVICE. THIS IS A LEGALLY BINDING CONTRACT AND SHOULD BE READ VERY CAREFULLY. IF YOU DO NOT UNDERSTAND THE EFFECT OF THIS CONTRACT, CONSULT WITH YOUR ATTORNEY BEFORE SIGNING.**

Dated the _____ day of _____, _____.

DISCLOSURE

BUYER IS ADVISED THAT THE BUILDING(S) LOCATED ON THE PROPERTY IF CONSTRUCTED BEFORE JANUARY 1, 1981; THEREFORE, IT IS PRESUMED THAT THERE IS ASBESTOS CONTAINING BUILDING MATERIALS IN THE FLOOR COVERINGS, THERMAL INSULATION MATERIALS, SPRAY-ON OR TROWELED-ON WALL AND CEILING SURFACES, AND OTHER MATERIALS IN THE BUILDING(S). THERE MAY BE OTHER HAZARDOUS MATERIALS IN THE BUILDING(S). BUYER ACCEPTS THE PROPERTY WITHOUT THE REMOVAL OF ANY ASBESTOS CONTAINING BUILDING MATERIALS AND OTHER HAZARDOUS MATERIALS.

Address:

Telephone No. _____
Cell No. _____
Facsimile No. _____
Email: _____

SELLER:

Address:

Telephone No. _____
Cell No. _____
Facsimile No. _____
Email: _____

BUYER:

Address:

16650 Interstate 27
Canyon, TX 79015-6157
Telephone No. (806) 655-3900
Facsimile No. (806) 655-393-3939

APPROVED BY AUCTIONEER:

ASSITER & ASSOCIATES, LLC,
a Texas limited liability company

By: _____
Tommy Ray Assiter, II, Member

RECEIPT BY TITLE COMPANY

The Title Company acknowledges receipt of this Contract and \$ _____ as Earnest Money from Buyer in the form of _____.

Dated: _____, _____.

By: _____
Name: _____
Title: _____