

BIDDER# _____

(SAMPLE)
AUCTION REAL ESTATE SALES CONTRACT

THIS CONTRACT, made this the _____ day of _____, _____,

By and Between _____ (Seller)

Whose Address is: _____

And

_____ (Buyer)

Whose Address is: _____

AGREEMENT TO PURCHASE. In consideration of the sum as identified in paragraph 2 below, the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell to Buyer, by General Warranty Deed, and Buyer agrees to purchase from Seller, pursuant to the terms and conditions hereinafter set forth, the real property identified as
Legal description: Being **(EXAMPLE): 57ac John Doe Survey, Abstract 33, Austin County, TX**

High Bid Price \$ _____

10.00 % Buyer's Premium (made payable to Market Realty, Inc.) \$ _____

Total Contract Price \$ _____

Down Payment/Deposit (made payable to TITLE COMPANY) \$ _____

10% of contract price if CASH sale, 20% if seller financed.

In U.S. Funds, based on the Total Contract Price, to be held in
A non-interest bearing escrow account by Closing Agent.

Balance of Purchase Price \$ _____

90% of contract price if CASH sale, 80% if seller financed.

In U.S. Funds, due at Closing, not including Buyer's closing
Costs or financing costs, prepaids or prorations, in immediately
Available cash or by confirmed wire transfer.

SELLER FINANCED: YES _____ or NO _____ If YES, see attached addendum

CLOSING: Closing shall take place at Title Company, whose address is Title Company Address on or before Date (Usually 30-45 days after sale). Phone, 979-123-4567. At Closing, Seller shall deliver to Buyer a General Warranty Deed, which shall convey fee simple title to the Property. Possession of the property shall be granted at Closing, subject to

those matters contained in the Title Commitment and the Sales Contract. Time is of the essence in this Contract.

4.TAXES AND OTHER PRORATIONS. The current year's Property Taxes shall be prorated between the Seller and Buyer at Closing. All back taxes if any, shall be the responsibility of the Seller.

5.CLOSING COSTS.

(a)**Seller's Costs.** At Closing, Seller shall pay the fees for preparation of the General Warranty Deed, title policy, costs relating to tax certificates and overnight courier fees on behalf of the Seller.

(b)**Buyer's Costs.** At Closing, Buyer shall pay the recording costs of the deed, overnight courier fee on behalf of the Buyer, homeowner association fees (if any), and Closing Agent's closing fees, and all additional sale or closing fees.

6.TERMS. This is a cash sale with Ten Percent (10%) down payment, OR seller financed with Twenty Percent (20%) down payment, with the balance due at Closing on or before _____ . This sale is not contingent upon financing.

BUYER ACKNOWLEDGES AND AGREES THAT BUYER'S OBLIGATIONS UNDER THE CONTRACT ARE NOT CONTINGENT UPON BUYER OBTAINING A LOAN FROM ANY LENDER. ACCORDINGLY, BUYER SHALL BE OBLIGATED TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT WHETHER OR NOT BUYER CAN OBTAIN A LOAN TO FINANCE THE PURCHASE OF THE PROPERTY.

7.DOWN PAYMENT/ DEPOSIT AND CLOSING AGENT. Buyer and Seller hereby acknowledge and agree that Closing Agent shall hold and deliver the Down Payment/Deposit, in accordance with the terms and conditions of this Contract, and that closing Agent shall be relieved of all liability and held harmless by both Seller and Buyer in the event Closing Agent makes a disbursement of the Down Payment/Deposit in accordance with the terms and provisions of this Contract. Closing Agent shall be relieved from any responsibility or liability and held harmless by both Seller and Buyer in connection with the discharge of any Closing Agent's duties hereunder provided that Closing Agent exercises ordinary and reasonable care in the discharge of said duties. Both parties understand that the Buyer's Down Payment/Deposit is non-refundable unless the Seller cannot close the transaction.

8.DISCLAIMER OF WARRANTIES ("AS-IS" CONVEYANCE)

(a)Buyer warrants and acknowledges to and agrees with Seller, and Market Realty, Inc., and Auction Service, that Buyer is purchasing the Property in an "As-Is, Where Is" condition "WITH ALL FAULTS" and specifically and expressly without any warranties, representations or guarantees, either expressed or implied, of any kind, nature, or type whatsoever, from or on behalf of the Seller.

(b)Buyer acknowledges to and agrees with Seller, Market Realty, Inc., and Auction Service that with respect to the Property, Seller, Market Realty, Inc., and Auction Service have not, do not, and will not make any warranties or representations, expressed or implied, or arising by operation of law, including, but in no way limited to, any warranty as to the value, physical condition, square footage, environmental condition, zoning, good repair, operability, habitability, tenantability, suitability, merchantability, profitability, marketability, past or present compliance with any

rules, regulations, covenants or restrictions, development potential or fitness for a particular use or purpose of the property.

(d) Buyer acknowledges that it is Buyer's responsibility to make such legal, factual and other inquiries and investigations, as Buyer deems necessary with respect to the property. Buyer(s) acknowledge(s) that they have executed this contract based solely on their own independent due diligence investigations and findings, and not in reliance on any information provided by SELLER OR MARKET REALTY, INC. OR AUCTION SERVICE or their affiliates, agents, officers, employees or representative. Buyer acknowledges that Buyer has not relied, and is not relying upon information, document, sales brochures or other literature, maps or sketches, projection, pro forma, statement, representation, guarantee or warranty (whether expressed or implied, oral or written, material or immaterial) that may have been given or made by or on behalf of the Seller or Market Realty, Inc. or Auctioneer. Buyer shall look only to Seller, and not to Market Realty, Inc., or auctioneer, as to all matters regarding this Agreement and the Property. Market Realty, Inc., or Auctioneer, shall not be responsible or liable in any way if the Seller fails or refuses to or cannot close title hereunder.

(e) Without in any way limiting the generality of the preceding subparagraphs (a) through (d), Buyer specifically acknowledges and agrees that Buyer hereby waives, releases and discharges any claim it has, might have had, or may have against the Seller and Market Realty, Inc., and Auctioneer with respect to the condition of the Property, either patent or latent.

9. PROPERTY INSPECTION. It is the Buyer's sole responsibility to perform all inspections (physical, legal, economic, environmental, archeological or otherwise) on the Property and to be satisfied as to its condition prior to making an offer on the Property; review all property information and due diligence materials; independently verify any information they deem important including information available in public records; and inquire of public officials as to the applicability of and compliance with land use and environmental laws building ordinances, zoning, health & safety codes, and any other local, state or federal laws and regulations.

Buyer is responsible for the costs of all inspections, surveys, engineering reports, environmental studies, including, but not limited to, lead-based paint tests, or for any other work performed at Buyer's request and Buyer shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit any claims or liens of any kind against the Property for inspections, surveys, engineering reports, or for any other work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller, Market Realty, Inc., and Auctioneer harmless against any liability, damage, cost or expense incurred, directly or indirectly, by Seller, as result of Buyer's inspection, examination, or survey of the Property, either prior to, on or after the date hereof. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this section, including Seller's reasonable attorney's fees. Buyer agrees to repair any damage caused by such inspections and to restore the Property to its condition prior to the inspection. This provision shall survive the Closing and any termination of this Contract.

10. **TITLE.** Buyer hereby agrees to accept title to the Property subject to (i) all standard exclusions and printed exceptions set forth in the owner's policy of title insurance, including all matters that would be disclosed by a current and accurate survey map of the Property; (ii) liens for taxes not yet due and payable; (iii) easements for public utilities affecting the Property; (iv) all other easements or claims to easements, covenants, restrictions and rights-of-way affecting the Property; (v) rights and claims of parties in possession; and (vi) all title exceptions referenced in the Title Commitment (the foregoing title matters are herein referred to as the "Permitted Title Exceptions"). Any applicable zoning ordinances, other land use laws and regulations, together with taxes for the current year and those matters, if any, which are waived by Buyer pursuant to this Paragraph 10, shall also be deemed Permitted Title Exceptions.

d. Maps and depictions included in the marketing material for the auction are for illustration purposes only and neither Seller, nor Market Realty, Inc., nor Auctioneer warrants or guarantees any of these materials or other information to be accurate or complete. Any fencing situated on the Property is not necessarily an indication of the property boundary. The Buyer shall be responsible for their own due diligence regarding the availability and/or accessibility of any utilities or the suitability for building on the Property. In addition, the Buyer shall be responsible for obtaining any and all permits for installation of utilities, wells, septic systems, and/or any costs related to such installation. Permits, tanks, meters, lines, and any other applicable fees shall be at the Buyer's expense. No personal property will be conveyed with the real estate.

e. The Property is selling subject to restrictive covenants and easements as shown in the Title Commitment and the Survey.

f.

11. **FIXTURES AND PERSONAL PROPERTY.** No personal property will be conveyed with the real estate.

12. **TITLE DEFECTS.** If the Title Commitment reveals a defect in title which is not one of the Permitted Title Exceptions, or if prior to the Closing a new defect in title is disclosed by an updated endorsement to the Commitment, which defect is not one of the Permitted Title Exceptions, prior to Closing Date, Buyer may either waive such defect or give written notice to Seller and Closing Agent no later than five (5) days from the date of discovery of such defect in title, whereupon Seller may, at its option, attempt to cure such defect prior to Closing or decline to cure such defect. If Seller is unable or unwilling to cure, on or before the Closing Date, any defect as to which Buyer has notified Seller as herein provided and if Buyer does not waive such defect on or prior to the Closing Date by written notice to Seller, this Contract shall be terminated without liability to either party and the Down Payment/Deposit shall be returned to the Buyer. Seller shall have the right, at its sole election, to extend the Closing Date by not more than Sixty (60) Days to attempt to cure any such defect in title.

13. COMMISSIONS.

(a) **Brokerage.** Buyer warrants and represents that Buyer [] is [] is not represented by a Buyer's Broker in this transaction. If Buyer is represented by a Buyer's Broker, the Buyer's Broker's name is: _____.

The Buyer's Broker must have performed all requirements of the Buyer Broker Guidelines as provided by Market Realty, Inc. Failure to properly register or comply with the provisions of the guidelines will disqualify the Buyer's Broker from receiving any commission.

(b)**Brokerage Commission** Upon the Closing of the transaction contemplated herein Seller shall pay Auctioneer a commission pursuant to the terms of a separate agreement. If the Buyer's Broker is properly registered with the Auctioneer, then at Closing, the Buyer's Broker shall be paid a commission of One and a half percent (2%) of the bid price as specified in Paragraph 2 herein. If for any reason whatsoever (including the default of any party hereto), the Closing hereunder does not occur, then no commission shall be due and payable to Buyer's Broker.

(c)**Agency Disclosure.** Auctioneer has acted as agent for the Seller in this transaction and is to be paid a commission by Seller pursuant to a separate written agreement between Seller and Auctioneer.

14.BREACH OF CONTRACT BY SELLER. If Seller defaults in the performance of any of its obligations pursuant to this Contract, and Closing fails to occur by reason thereof, Buyer may terminate this Contract and receive the Deposit, or seek specific performance of this Agreement. In no event shall Seller or Auctioneer be liable for any damages including special, incidental or consequential damages, or economic loss and/or attorney fees.

15.BREACH OF CONTRACT BY BUYER. In the event the purchase and sale contemplated in this Contract is not consummated as a result of Buyer's default, Buyer's Down Payment/Deposit shall be forfeited to Seller, and Seller shall have all rights as allowed by law to file for damages, specific performance or cancellation of this transaction, with Buyer to be responsible for all costs of suit, including attorney's fees and court costs.

In addition, in the event that Seller is unable to collect on any check delivered by Buyer to Seller or Closing Agent, then, at Seller's option, without notice, this Contract may be terminated immediately and any Down Payment/ Deposit held by Seller or Closing Agent shall be paid to Seller, and Seller may pursue any rights and remedies available at law or in equity.

16.CASUALTY. Except as herein provided, all risk of loss with respect to damage to the Property shall be borne by Seller until the Date of Closing; thereafter all risk of loss shall be borne by Buyer. In the event that the Property is, in the opinion of Seller, significantly damaged or is destroyed by fire or other casualty or hazard prior to Closing, Seller shall have the option to restore the Property to its pre-casualty condition or to cancel this Contract and Buyer's Down Payment/ Deposit shall be returned as a complete and final settlement to Buyer of all Seller's obligations hereunder. Should Seller desire to restore the Property to its pre-casualty condition, Seller shall so notify Buyer and thereafter have 120 days to complete such restoration, with the Closing Date to be postponed accordingly.

17.**NOTICES.** All notices under this Contract shall be deemed delivered when personally delivered or mailed postage prepaid, certified or registered mail, return receipt requested, or when delivery by a courier service to the addresses set forth next to the signature of each party below. A copy of all notices given hereunder shall be delivered to Auctioneer and Closing Agent.

18.**WAIVER.** No failure or delay on the part of Seller in exercising neither any right of Seller nor any action on the part of Seller or any course of dealing or partial performance shall be deemed a waiver of any right of Seller set forth herein or a modification of any terms set forth herein.

19.**ENTIRE AGREEMENT; AMENDMENT.** This written Contract and the Exhibits, Schedules and Addenda attached hereto and made a part of this Contract signed by Buyer constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the parties with respect to the Property. This Contract may not be amended, altered, modified or discharged except by an instrument in writing signed by the Buyer and Seller.

20.**SEVERABILITY.** The invalidity of any provision of this Contract shall not affect the validity or enforceability of any other provision set forth herein.

21.**ASSIGNMENT.** Buyer may not assign this Contract or Buyer's rights hereunder without the prior written consent of Seller, which consent may be given or withheld in Seller's sole discretion.

22.**BINDING EFFECT.** This Contract shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, personal representatives, legal representatives, heirs and assigns.

23.**COUNTERPARTS.** The Contract may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.

24.**ACKNOWLEDGEMENT.** The undersigned ("Buyer") certifies that he or she is of legal age and has full legal capacity and authority to understand, execute and deliver this Contract on behalf of himself or herself. If Buyer is purchasing the Property on behalf of a for-profit entity, non-profit organization, or public agency, the Buyer is executing this Contract on behalf of such entity and Buyer certifies to Seller that Buyer has the authority to execute this Contract on behalf of such entity, and that such entity shall be bound by the matters contained herein.

25.ARBITRATION OF DISPUTES. Any dispute or claim in law or equity between Seller and Buyer directly or indirectly arising out of or relating to this Contract or any resulting transaction (including any dispute regarding whether this arbitration clause is enforceable or applicable) shall be decided by a neutral, binding arbitration and not by court action, except as provided by Texas law for judicial enforcement or review of arbitration decisions.

The arbitration shall be heard by one arbitrator and conducted by and in accordance with the commercial arbitration rules of Judicial Arbitration And Mediation Services, Inc. or its successor. Arbitration fees, including the fees and expenses of the arbitrator, shall be divided equally among the parties involved.

26.ATTACHMENTS. The following Attachments/Exhibits are attached hereto and fully incorporated herein by reference for all parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract, as of the day and year first above written.

Seller Signature: _____

Print name: _____

Mailing address: _____

Phone: _____

Fax #: _____

Email: _____

Cell #: _____

Buyer Signature: _____

Print name: _____

Mailing address: _____

Phone: _____

Fax #: _____

Email: _____

Cell #: _____