

## COMMERCIAL REAL ESTATE CONTRACT - IMPROVED PROPERTY

### 200 SOUTH AUSTIN STREET

**1. PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2 subject to a feasibility study ("Inspection Period") in Paragraph 7 and the contingencies listed in Paragraph 11 and other terms herein. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

**Seller:** Alfredo Leos, III

Address: 551 Terminal Loop #83, McQueeney, Texas 78123

Phone: (210) 296-9936

Seller's Attorney:

**Buyer:** City of Seguin, Texas

Contact: Kyle Kram, Main Street Director

Address: 205 N. River Street, Seguin, Texas 78155

Phone: (830) 401-2448

Buyer's Attorney: Sam Aguirre (saguirre@seguintexas.gov)

## 2. PROPERTY:

A. "Property" means that real property being Lot:1 NE 32 x 50 of Block: 165, Inner Subdivision more commonly known as "200 South Austin Street" situated in Guadalupe County, Seguin, Texas

B. Seller will sell and convey the Property together with:

(1) all buildings, improvements, and fixtures;

(2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;

(3) Seller's interest in all licenses and permits related to the Property;

(4) Seller's interest in all third-party warranties or guaranties, if transferable, relating to the Property or any fixtures;

(6) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except:

**3. SALES PRICE:** At or before closing, Buyer will pay a sales price for the Property of \$472,000.00.

**4. FINANCING:** This contract is NOT contingent upon Buyer obtaining third party financing.

Initialed for Identification by Buyer \_\_\_\_\_ Seller AL

## 5. EARNEST MONEY:

A. Not later than five days after the effective date, Buyer must deposit \$5000.00 as earnest money with Karen Schaker at Five Star Title, 304 North Austin Street, Seguin, Texas 78155. The title company is the escrow agent under this contract.

B. If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money and may exercise Seller's remedies under Paragraph 15.

C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

## 6. TITLE POLICY, SURVEY, AND UCC SEARCH:

### A. Title Policy:

(1) Seller, at Buyer's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:

(a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and

(b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.

(2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements will not be amended or deleted from the title policy.

(3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6D.

(4) Within 21 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

### B. Survey:

(1) During the Inspection period Buyer may obtain a survey of the Property satisfactory to Buyer at Buyer's expense and deliver a copy of the survey to Seller.

(2) Within 21 days after the effective date, Seller will furnish Buyer copies of any surveys of the Property in Seller's possession.

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller  \_\_\_\_\_

**D. Buyer's Objections to the Commitment and any Survey:**

(1) Within five days after Buyer receives the commitment, copies of the documents evidencing title exceptions, and any survey, Buyer may object to matters disclosed in the items if:

(a) the matters disclosed constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or

(b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA);

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 20 days after Seller receives the objections. The closing date will be extended as necessary to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within five days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7A(3)(a), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

**7. PROPERTY CONDITION:**

A. The Property is being sold in its present condition, subject to the proper completion of repairs set forth in Exhibit A on or before the end of the Inspection Period:

(1) Delivery of Property Information: Within 21 days after the effective date, Seller will deliver to Buyer the following items to the extent that the items are in Seller's possession or are readily available to Seller. Any item not delivered is deemed not to be in Seller's possession or readily available to Seller. The items Seller will deliver are:

- (a) a current inventory of all personal property to be conveyed under this contract;
- (b) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- (c) copies of current utility capacity letters from the Property's water and sewer service provider;
- (d) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- (e) a copy of the "as-built" plans and specifications and plat of the Property;
- (f) copies of all invoices for repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date; and

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller  \_\_\_\_\_

(g) copies of all previous environmental assessments, studies, or analyses made on or relating to the Property.

(2) Inspections, Studies, or Assessments:

(a) Within 60 days after the effective date, Buyer, at Buyer's expense, may complete or cause to be completed inspections, studies, or assessments of the Property, including all improvements and fixtures. Inspections, studies, or assessments may include, but are not limited to:

(i) physical property inspections (for example, structural pest control, mechanical, structural, electrical, and plumbing inspections);

(ii) economic feasibility studies;

(iii) environmental assessments (for example, soil tests, air sampling, and paint sampling);

(iv) engineering studies; and

(v) compliance inspections (for example, compliance determination with zoning ordinances, restrictions, building codes, and statutes).

(b) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(c) Buyer must:

(i) employ only trained and qualified inspectors and assessors;

(ii) notify Seller, in advance, of when the inspectors or assessors will be on the Property;

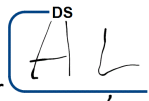
(iii) abide by any reasonable entry rules or requirements that Seller may require;

(iv) not interfere with existing operations or occupants of the Property; and

(v) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Feasibility Period and Right to Terminate: Buyer may terminate this contract for any reason within 60 days after the effective date (the "Inspection Period") by providing Seller with written notice of termination. If Buyer does not terminate within the time required, Buyer accepts the Property in its present "as is" condition with any repairs Seller is obligated to complete under this contract. If Buyer provides such written election to close, the closing shall be within 15 days after Seller's receipt of such election, subject to the scheduling availability of the escrow agent.

(a) If Buyer terminates under this Paragraph 7A(3), the earnest money will be refunded to Buyer less \$500.00 that Seller will retain as independent consideration for Buyer's right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the full amount

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller  \_\_\_\_\_

specified in Paragraph 5 to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale.

(4) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date:

(i) return to Seller all those items described in Paragraph 7A(1) that seller delivered to Buyer and all copies that Buyer made of those items; and (ii) deliver copies of all inspection and assessment reports (excluding economic feasibility studies) related to the Property that Buyer completed or caused to be completed. This Paragraph 7A(4) survives termination of this contract.

(5) Contract Affecting Operations: After the effective date, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's prior written approval.

## **8. BROKERS:**

A. Neither party has retained a broker and no broker's fees are due or payable by either party at closing.

## **9. CLOSING:**

A. The closing of the sale will be within 15 days after the end of the Inspection Period or within 10 days after objections to title have been cured, whichever date is later (the closing date). If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

B. At closing, Seller will execute and deliver, at Buyer's expense, a general warranty deed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property at closing:

(1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price unless securing loans Buyer assumes;

(2) without any assumed loans in default; and

(3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

C. At closing, Seller, at Seller's expense, will also deliver:

(1) tax statements showing no delinquent taxes on the Property;

(2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;

(3) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller AL

- (a) licenses and permits;
- (b) maintenance, management, and other contracts; and
- (c) warranties and guaranties;

(4) evidence that the person executing this contract is legally capable and authorized to bind Seller; and

(5) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.

D. At closing, Buyer will:

- (1) pay the sales price in good funds acceptable to the escrow agent;
- (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
- (3) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

E. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

**10. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Until closing, Seller will operate the Property in the same manner as on the effective date and will not transfer or dispose of any of the personal property described in Paragraph 2B or sold under this contract. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

**11. SPECIAL PROVISIONS:** This contract and the Buyer's purchase of the Property are contingent upon:

A. Seller completing the items listed in Exhibit A, attached hereto and made a part hereof for all purposes; and

B. Approval of this contract by the Seguin City Council.

**12. SALES EXPENSES:**

A. Seller's Expenses: Seller will pay for the following at or before closing:

(1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;

(2) release of Seller's loan liability, if applicable;

Initialed for Identification by Buyer \_\_\_\_\_ Seller AL

- (3) tax statements or certificates;
- (4) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

**B. Buyer's Expenses:** Buyer will pay for the following at or before closing:

(1) all loan expenses (for example, application fees, origination fees, discount fees, buy-down fees, commitment fees, appraisal fees, assumption fees, recording fees, tax service fees, mortgagee title policy expenses, credit report fees, document preparation fees, interest expense that Buyer's lender requires Buyer to pay at closing, loan related inspection fees, amortization schedule fees, courier fees, underwriting fees, wire transfer fees, and other fees required by Buyer's lender);

- (2) preparation fees of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee;
- (6) copy and delivery fees for delivery of the title commitment and related documents; and
- (7) other expenses that Buyer will pay under other provisions of this contract.

**13. PRORATIONS, ROLLBACK TAXES, ESTOPPEL CERTIFICATES, RENT, AND DEPOSITS:**

**A. Prorations:**

(1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.

(2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 13A(2) survives closing.

(3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

**B. Rollback Taxes:** if Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessment) for periods before closing, the assessments will be the obligation

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller AL

of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 13B survives closing.

#### **14. CASUALTY LOSS AND CONDEMNATION:**

A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so,

Buyer may:

(1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7A(3)(a), will be refunded to Buyer;

(2) extend the time for performance up to 15 days and the closing date will be extended as necessary; or

(3) accept at closing: (i) the Property in its damaged condition;

(ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and

(iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.

#### **15. DEFAULT:**

A. If Buyer fails to comply with this contract. Buyer is in default and Seller may:

(1) terminate this contract and receive the earnest money as liquidated damages, thereby releasing the parties from this contract; or

(2) enforce specific performance, or seek other relief as may be provided by law, or both.

B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates or the commitment, Buyer may:

(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7A(3)(a), as the sole remedy; or

(2) extend the time for performance up to 15 days and the closing will be extended as necessary.

C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:

(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7A(3)(a), as liquidated damages, thereby releasing the parties from this contract; or

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller  \_\_\_\_\_



(2) enforce specific performance or seek such other relief as may be provided by law, or both.

**16. ATTORNEY'S FEES:** If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 16 survives termination of this contract.

**17. ESCROW:**

A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.

B. If both parties make written demand for the earnest money, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.

C. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 30 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.

D. Escrow agent will deduct any independent consideration under Paragraph 7A(3)(a) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.

E. If escrow agent complies with this Paragraph 17, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.

F. Notices under this Paragraph 17 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.

**18. MATERIAL FACTS:**

A. To the best of Seller's knowledge and belief:

(1) Seller is not aware of any material defects to the Property, except as stated in the attached Property Condition Statement or otherwise disclosed to or independently discovered by Buyer.

(2) Seller is not aware of any of the following, except as stated in the attached Property Condition Statement or otherwise disclosed to or independently discovered by Buyer

(a) any subsurface: structures, pits, waste, springs, or improvements;

(b) any pending or threatened litigation, condemnation, or assessment affecting the Property;

(c) any environmental hazards or conditions that affect the Property;

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller AL

(d) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;

(e) whether radon, asbestos insulation or fireproofing, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;

(f) whether wetlands, as defined by federal or state law or regulation, are on the Property;

(g) whether threatened or endangered species or their habitat are on the Property; and

(h) any material physical defects in the improvements on the Property.

**19. NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send \_\_\_\_\_ copies of any notices to the broker representing the party to whom the notices are sent.

**20. FEDERAL TAX REQUIREMENT:** If Seller is a "foreign person" as defined by applicable law, or if Seller fails to deliver at closing an affidavit that Seller is not a foreign person, then Buyer will withhold from the sales proceeds at closing an amount sufficient to comply with applicable tax law and deliver the amount withheld to the internal Revenue Service (IRS), together with appropriate tax forms. IRS regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns.

B. This contract is to be construed in accordance with the laws of the State of Texas.

C. This contract contains the entire agreement of the parties and may not be changed except in writing.

D. if this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts collectively constitute one agreement.

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller  \_\_\_\_\_

E. Buyer may assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

**23. TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**24. EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

**25. ADDITIONAL NOTICES:**

A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.

C. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, Section 33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.

D. If the Property is located seaward of the Gulf Intracoastal Waterway, ss.61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.

E. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

F. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.

G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers.

Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller  \_\_\_\_\_

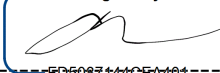
**26. CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer by Buyer to sell the Property. Unless the Seguin City Council approves this contract on February 7, 2023, the offer will lapse and become null and void.

**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.

Buyer:

Seller:

By: \_\_\_\_\_  
Steve Parker, City Manager

DocuSigned by:  
  
-----FD5087144CEA401-----  
Alfredo Leos, III

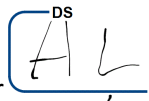
Initialed for Identification by Buyer \_\_\_\_\_, \_\_\_\_\_ Seller \_\_\_\_\_, \_\_\_\_\_

DS  
AL

## EXHIBIT A

**Seller will be responsible for completing these items before the end of the Inspection Period. These items must be constructed in compliance with City ordinances and building codes and pass a City inspection:**

1. Downstairs and upstairs restrooms must be finished completely and must meet ADA requirements.
2. Repair and/or adjust bathroom door so that it does not drag floor.
3. All trim must be replaced throughout the building along the floor except in the area where the elevator will be constructed.
4. Broken window on the front of building must be replaced with like material.
5. Repair upstairs bathroom commode. The tank is loose and there is a leak between the tank and bowl.
6. The upstairs bathroom vent is not working at this time and must be repaired.
7. The upstairs bathroom vent pipe must be boxed in with a material that is approved by the City.

Initialed for Identification by Buyer \_\_\_\_\_ Seller  \_\_\_\_\_