

**COMMERCIAL PROPERTY CONTRACT**

1. **PARTIES:** The parties to this Contract are **Cheryl Ann Myers**, an individual (hereinafter called "Seller") and the **City of Burnet, Texas**, (hereinafter called "Buyer"), a Texas home rule municipality. Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.
  
2. **PROPERTY:** The Property, together with all rights, privileges and appurtenances pertaining thereto, including but not limited to: claims, permits, strips and gores, easements, and cooperative or association memberships is described as follows:  
  

**Being** 4.39 acres of land out of the B. B. Castleberry Survey, Abstract No. 187, in Burnet County, Texas, and being more particularly described in that certain Warranty Deed recorded as Instrument No. 200802852, in the Public Records of Burnet, County, Texas.
  
3. **SALES PRICE:** One Hundred Twenty-Five Thousand Dollars and 00/100 (\$125,000.00) (hereinafter the "Purchase Price").
  
4. **EARNEST MONEY:** Upon execution of this Contract by all parties, Buyer shall deposit Five Thousand Dollars and 00/100 Cents (\$5,000.00) as Earnest Money with Attorney's Abstract Title Company, Attn: Lisa Campbell, 117 E. Jackson Street, Burnet TX 78611. If Buyer fails to deposit the Earnest Money within thirty days of Sellers delivery of this Contract, Seller's offer to sell the Property shall be withdrawn, this Contract shall not be effective, and the Escrow Agent shall not accept the late deposit of the Earnest Money.
  
5. **TITLE POLICY; SURVEY AND SELLERS DELIVERABLES:**
  - A. **TITLE POLICY:** At closing Seller shall, at its sole costs, provide an Owner's Policy of Title Insurance by Title Company, as agent for Underwriter, or directly by Underwriter.
  - B. **COMMITMENT:** Seller shall, within 20 days of the Effective Date, provide to Buyer a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, or directly by Underwriter, stating the condition of title to the Property. The "effective date" stated in the Title Commitment must be after the Effective Date of this Contract.
  - C. **SURVEY:** Buyer shall, within 20 days of the Effective Date at its sole costs, obtain an on-the-ground, staked plat of survey and metes-and-bounds description of the Property, prepared by a surveyor satisfactory to Title Company, dated after the Effective Date, and certified to: Seller, Buyer, and Title Company, to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category required by Title Company.
  - D. **OBJECTIONS:** Buyer shall have 20 days after the later of Buyer's receipt of the Title Commitment or a copy of the Survey ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey, and Title Commitment, to which Buyer has made no Title Objection by the

Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has ten days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within ten days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this Contract is terminated or Buyer will proceed to close, subject to Seller's obligations to remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this Contract, and cure the Title Objections that Seller has agreed to cure.

E. TITLE NOTICES:

- i. ABSTRACT OR TITLE POLICY: Buyer is advised to have the Title Policy Commitment reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- ii. MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): To the best of Seller's knowledge and belief the Property is not subject to mandatory membership in a property owner's association.
- iii. STATUTORY TAX DISTRICTS: To the best of Seller's knowledge and belief the Property is not situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, as those terms are reference in Texas Water Code Chapter 49.
- iv. TIDE WATERS: To the best of Seller's knowledge and belief the Property does not abut tidally influenced waters of the state, as such term is referenced in Texas Natural Resources Code §33.135.
- v. ANNEXATION: To the best of Seller's knowledge and belief the Property is located within the corporate limits of Burnet, Burnet County, Texas.
- vi. PROPERTY LOCATED IN A CERTIFIED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The Property's water and sewer service is provided by the City of Burnet and Buyer agrees to inquiry with the City regarding any conditions of service.
- vii. PUBLIC IMPROVEMENT DISTRICT: To the best of Seller's knowledge and belief the Property is not in a Public Improvement District, as term is referenced in the Texas Property Code §5.014.
- viii. TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: To the best of Seller's knowledge and belief the property is not located in a Texas Agricultural District.
- ix. TRANSFER FEES: To the best of Seller's knowledge and belief the Property is not subject to a private transfer fee obligation as such term is referenced in Texas Property Code §5.205.
- x. PROPANE GAS SYSTEM SERVICE AREA: To the best of Seller's knowledge and belief the Property is not located in a propane gas system

service area owned by a distribution system retailer, as such term is referenced in Texas Utilities Code §141.010.

- F. SELLER'S DELIVERABLES. Seller shall, within 20 days of the Effective Date at its sole costs, provide to Buyer all existing environmental and engineering reports in Seller's possession, if any (collectively "Seller's Deliveries"). Buyer acknowledges and agrees that neither Seller nor any of Seller's attorneys, consultants or contractors have made any representation or warranty regarding the truth or accuracy of any of the Seller's Deliveries. Seller has not undertaken any independent investigation as to the truth, completeness, or accuracy thereof, except as expressly provided for in this Contract. The furnishing of the Seller's Deliveries and any other materials, documents, reports, or agreements shall not be interpreted in and of itself as a representation or warranty of any type or kind by Seller or any other party related in any way to any of the foregoing. The Seller's Deliveries may not be relied upon by Purchaser or any other party for any purpose. Buyer is advised and encouraged to conduct its own independent investigation of the matters within the scope of the Seller's Deliveries. Except for Buyer's consultants engaged to evaluate the feasibility of the Property for Buyer's intended purpose, Buyer shall not disclose Seller's deliverables to any third party. Moreover, should this Contract terminate without closing, Buyer shall return Seller's Deliverables to Seller within 10 days of such termination.
- G. DELIVERY DELAY. Notwithstanding any provision to the contrary, for each day delivery of the Title Commitment, Survey, or Seller's Deliverables is delayed beyond the 20<sup>th</sup> day after the Effective Date, a day shall be added to the Feasibility Period. This remedy shall run concurrently so that for example if there is a one-day delay in delivery of both the Title Commitment and the Survey only one day shall be added to the Feasibility Period.

6. **FEASIBILITY:**

- A. FEASIBILITY PERIOD: Buyer's Feasibility Period shall begin on the Effective Date and shall end 90 days after the Effective Date.
- B. EXTENSION TO FEASIBILITY PERIOD. Buyer will have the option to extend the Feasibility Period for an additional 30 days by depositing an additional Five-Thousand Dollars (\$5,000.00) (the "Feasibility Extension Deposit") with the Escrow Agent on or before the expiration of the Feasibility Period. The Feasibility Extension Deposit shall be considered part of the Earnest Money, will be fully refundable until the expiration of the extended Feasibility Period and shall be applied to the Purchase Price at Closing.
- C. BUYER'S RIGHT TO TERMINATE DURING FEASIBILITY PERIOD: During the Feasibility Period Buyer may, at its sole discretion, terminate this Contract, for any reason; and, should Buyer timely exercise its right to terminate, as evidenced by written notification to Seller then neither Party shall have any further obligation to the other under this Contract. If Buyer terminates this Contract before the end of the Feasibility Period, then unless Seller delivers notice of Seller's objection to Title Company's release of the Earnest Money to Buyer within five days after Buyer delivers Buyer's termination notice to Seller and Title Company, Title Company is authorized, without any further authorization from Seller, to deliver

the Earnest Money to Buyer, less \$100, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this Contract.

7. **PROPERTY CONDITION:**

- A. **ACCESS, INSPECTIONS AND UTILITIES:** Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and permitted by law to make inspections. **NOTICE:** Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.
- i. **Buyer's Indemnity and Release of Seller**
- a. **Indemnity.** To the fullest extent authorized by law, Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except those arising out of the acts or omissions of Seller and those for repair or remediation of existing conditions discovered by Buyer's inspection. The obligations of Buyer under this provision will survive termination of this Contract and closing.
- b. **Release.** Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.
- B. **ACCEPTANCE OF PROPERTY CONDITION:** "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this Contract. Buyer (Grantee) accepts the Property "As Is" as more particularly described in Seller's (Grantor's) disclaimer regarding Representations and Warranties set out in bold capital letters below and which shall be made part of the Deed.

**"GRANTEE ACCEPTS THE PROPERTY "AS IS" AND "WHERE IS," WITH ALL FAULTS, AND, EXCEPT FOR THE WARRANTIES OF TITLE CONTAINED IN THIS DEED AND THE LIMITED EXPRESS WRITTEN REPRESENTATIONS CONTAINED IN THE SURVIVING LANGUAGE OF THE CONTRACT FOR SALE OF THE PROPERTY**

- C. **COMPLETION OF REPAIRS:** Buyer shall be responsible for all necessary repairs of the structure(s) located on the Property.
- D. **ENVIRONMENTAL MATTERS:** Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by the Texas Bar, or approved by the parties, should be used.
- E. **SELLER'S DISCLOSURES:** Except as otherwise disclosed in this Contract, Seller has no knowledge of the following:
- i. any flooding of the Property which has had a material adverse effect on the use of the Property;

- ii. any pending or threatened litigation, condemnation, or special assessment affecting the Property;
  - iii. any environmental hazards that materially and adversely affect the Property;
  - iv. any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
  - v. any wetlands, as defined by federal or state law or regulation, affecting the Property; or
  - vi. any threatened or endangered species or their habitat affecting the Property.
8. **BROKERS' FEES:** Neither Seller nor Buyer have engaged a Broker in regard to this transaction. Buyer and Seller each indemnify and agree to defend and hold the other party harmless from any loss, attorney's fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the indemnitor for a broker's or finder's fee or commission because of this transaction or this Contract, whether the claimant is disclosed to the indemnitee or not.
9. **CLOSING:**
- A. **DATE:** The closing of the sale shall occur at a mutually agreed time and date within 30 days after the end of Buyer's Feasibility Period.
  - B. **OBLIGATIONS:** At closing:
    - i. Seller shall execute and deliver a special warranty deed, conveying title to the Property to Buyer and showing only the Permitted Exceptions, and shall furnish tax statements or certificates showing no delinquent taxes on the Property.
    - ii. Buyer shall deliver for escrow the balance of the Sales Price.
    - iii. Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale.
    - vi. The Property will be conveyed to Buyer free and clear of any liens, assessments, or security interests against the Property, but subject to the Permitted Exceptions listed in the Title Commitment.
    - vii. Seller will, at Seller's sole cost, cause the Title Company to issue an owner's title policy in favor of Buyer in the amount of the Purchase Price, insuring Buyer's good and indefeasible title to the Property, subject only to the Permitted Exceptions.
  - C. **COOPERATION:** Each party agrees to cooperate with the other and take those actions and execute such ancillary documents as may reasonably be necessary to facilitate the closing.
10. **POSSESSION:**
- A. **BUYER'S POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing.
  - B. **LEASES:**
    - i. After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.

- ii. As of the effective date the Property is not subject to any lease agreements.

11. **SPECIAL PROVISIONS:**

- A. **APPROVALS.** The Execution of this Contract on behalf of Buyer has been authorized by the Burnet City Council.
- B. **ASSIGNMENT.** This Contract is assignable by Buyer.
- C. **EXISTING STRUCTURES.** Buyer acknowledges Seller has made no representations as to the state of repair or any aspect of the existing structures.

12. **SETTLEMENT AND OTHER EXPENSES:**

- A. The following expenses must be paid at or prior to closing:
  - i. Expenses payable by Seller (Seller's Expenses): Release of existing liens, including prepayment penalties, and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half (1/2) of the costs of the escrow officer's fees; premium for Title Policy; Seller's prorated portion of Ad valorem taxes; Seller's attorney fees and consultant fees; and other expenses payable by Seller under this Contract.
  - ii. Expenses payable by Buyer (Buyer's Expenses): Premium for shortage of area endorsement or other endorsements that are not included in the Owner's Policy; costs associated with procuring the Survey; one-half (1/2) of the costs of the escrow officer's fees; Buyer's prorated portion of Ad valorem taxes and special governmental assessments; courier fee; Buyer's attorney fees and consultant fees; and other expenses payable by Buyer under this Contract.

13. **PRORATIONS AND ROLLBACK TAXES:**

- A. **PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues, and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the proration when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.
- B. **ROLLBACK TAXES:** Buyer shall be responsible for any assessment of rollback taxes.

14. **CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this Contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this Contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this Contract.

15. **DEFAULT:** If Buyer fails to comply with this Contract, Buyer will be in default, and Seller may, as its sole remedy, terminate this Contract and receive the earnest money as liquidated damages, thereby releasing both parties from this Contract. If Seller fails to comply with this Contract for any other reason, Seller will be in default and Buyer may elect to either: (a) enforce specific performance and seek all other relief in law and equity available to Buyer under the laws of Texas; or (b) terminate this Contract and receive the earnest money, thereby releasing both parties from this Contract.
16. **MEDIATION:** It is the policy of the States of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this Contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.
17. **ATTORNEY’S FEES:** A Buyer, Seller, or escrow agent who prevails in any legal proceeding related to this Contract is entitled to recover reasonable attorney’s fees and all costs of such proceeding.
18. **REPRESENTATIONS:** All covenants, representations and warranties in this Contract survive closing. If any representation of Seller in this Contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate, and accept back up offers.
20. **FEDERAL TAX REQUIREMENTS:** This Paragraph is not applicable as Seller is not a “foreign person,” as defined by applicable law.
21. **NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile as follows:  
**To Seller at:**  
CHERYL ANN MYERS  
204 S. Beach Street  
Burnet, Texas 78611  
  
**To Buyer at:**  
CITY OF BURNET  
% City Manager  
P.O. Box 1369  
Burnet, Texas 78611  
Telephone: (521) 715-3208  
Facsimile: (521) 756-8560  
E-mail: [dvaughn@cityofburnet.com](mailto:dvaughn@cityofburnet.com)
22. **AGREEMENT OF PARTIES:** This Contract contains the entire agreement of the parties and cannot be changed except by their written agreement.

23. **CONSULT AN ATTORNEY BEFORE SIGNING.** Buyer is advised to consult with an attorney of Buyer's choice should Buyer questions about this Contract or any matter related to this Contract.

**Signature pages to follow:**



**EXECUTED** the \_\_\_\_ day of \_\_\_\_\_, 2024. (EFFECTIVE DATE.)

**SELLER**  
**Cheryl Ann Myers**

By: \_\_\_\_\_  
Cheryl Ann Myers

**BUYER**  
**City of Burnet**

By: \_\_\_\_\_  
David Vaughn, City Manager

**CONTRACT AND EARNEST MONEY RECEIPT**

Receipt of Contract and \$5,000.00 Earnest Money in the form of \_\_\_\_\_ is acknowledged.

Escrow Agent: Lisa Campbell, Attorney's Abstract Title Company

Date: \_\_\_\_\_, 2024

By: \_\_\_\_\_

Attorney's Abstract Title Company  
117 E. Jackson Street,  
Burnet, TX 78611.