

## CONTRACT – COMMERCIAL BUILDING

\* \* \* \* \*

This is a Contract whereby Kay Fulgenzi (**Seller**),  
agrees to sell to \_\_\_\_\_ (**Buyer**),  
who agrees to purchase, upon the terms and provisions hereof, the following described real  
property:

2722 SW 10TH AVE, AMARILLO, TX

SECT 226 A B & M BLK 0002, IRREG TR BEG 516FT S & 610.74FT SW OF NE COR OF SECT

LESS ALLEY, 0.200 ACRES

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**). Buyer acknowledges and  
agrees that Buyer is purchasing the Property **AS IS, WHERE IS, IN ITS PRESENT PHYSICAL  
CONDITION**, subject to ad valorem tax liens, if any, against the Property.

### Article 1

1.1 Purchase Price. The total purchase price is \$ \_\_\_\_\_ (**the Purchase  
Price**) payable to Seller in cash or immediately available funds at closing.

1.2 EARNEST MONEY DEPOSIT. Upon the execution of this Contract by Seller, as a  
condition precedent to the enforcement of this Contract, Buyer will deposit \$ \_\_\_\_\_ (**the Earnest  
Money**) in immediately available funds with Stewart Title (**the Title Company**).  
The Title Company is not required to deposit the Earnest Money in an interest bearing account.  
**The Earnest Money is non-refundable to Buyer.** Within 24 hours of the Closing Date or  
termination of this Contract, whichever is earlier, the Earnest Money will be distributed by the Title  
Company to Assiter & Associates, LLC ("Assiter") as compensation for auctioneering services. The  
Title Company's contact information is :

|                |                               |
|----------------|-------------------------------|
| Address:       | <u>7810 Hillside Rd #200</u>  |
|                | <u>Amarillo, TX 79119</u>     |
| Telephone No.: | <u>(806) 353-5591</u>         |
| Email:         | <u>bart.mizer@stewart.com</u> |

1.3 Termination Option. Buyer may terminate this Contract for any reason within three  
calendar days after the date of this Contract (**the Termination Period**) by providing Seller and  
Assiter (*defined below*) written notice of termination. If Buyer gives written notice of termination  
as provided above, the Earnest Money will not be refunded and the Title Company will release  
the Earnest Money to Assiter as independent consideration to Assiter and Seller for Buyer's right

to terminate during the Termination Period and the Contract will be terminated and there will be no further obligation to be borne, performed, or enforced by any party.

1.4 Closing Date. Closing will be on or before June 13, 25, (**the Closing Date**) at the offices of the Title Company.

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

## Article 2

2.1 Title Commitment. Buyer acknowledges receipt of a title commitment (**the Commitment**) covering the Property binding the Title Company to issue a Texas owner policy of title insurance. Buyer will accept title to the Property subject to all exceptions to title shown on Schedule B to the Commitment (**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.

2.2 Title Insurance. Buyer will receive an owner policy of title insurance (**the Title Policy**) issued by the Title Company. The Title Policy will be delivered as soon as possible after the sale is closed. The Title Policy will be in the form prescribed by the Texas State Board of Insurance, dated as of the Closing Date, and issued to Buyer in the amount of the Purchase Price, guaranteeing Buyer's title to be good and indefeasible subject to the Permitted Exceptions. The cost of the Title Policy will be paid by Buyer.

2.3 Conveyance. At closing, Seller will convey the Property to Buyer as-is by a special warranty deed subject to the Permitted Exceptions.

2.4 Seller's Closing Costs. Seller will pay the following closing costs: (i) preparation of special warranty deed, (ii) title curative costs, (iii) tax certificates, (iv) one-half of the escrow fee, (v) Seller's attorney's fees, and (vi) other expenses provided in this Contract.

2.5 Buyer's Closing Costs. Buyer will pay the following closing costs: (i) one-half of the escrow fee, (ii) recording fee for the special warranty deed, (iii) Buyer's attorney's fees, and (iv) other expenses provided in this Contract.

2.6 Prorations. Taxes, rents, and any expense reimbursements from tenants will be prorated through the Closing Date.

2.7 Rollback Taxes. If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (**collectively, the Assessments**) for periods before closing, the Assessments will be the obligation 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 survives closing.

2.8 Rent and Security Deposits. At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within five days after the rent is received. This paragraph survives closing.

2.9 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 in accordance with the terms of Paragraph 1.2, 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.

2.10 Auctioneer's Commission. ASSITER & ASSOCIATES, LLC, a Texas limited liability company, served as the auctioneer and real estate broker (**Assiter**) and has conducted the auction to sell the Property. The Earnest Money identified in Paragraph 1.2 is compensation to Assiter for provision of auctioneering services.

2.11 Notice to Buyer. According to the terms of the Texas Real Estate License Act, you, as Buyer, are advised by Assiter 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.

2.12 Seller's Remedies. Upon failure of Buyer to comply with this Contract, Seller may cancel this Contract and retain the Earnest Money as liquidated damages as provided below. The parties agree that such sum is fair and reasonable in light of all of the circumstances existing on the date of this Contract, including the parties' estimation of the possible range of damages to Seller in the event of a default or breach by Buyer. The parties agree that the damages to Seller in the event of Buyer's default or breach would be impossible to accurately determine and that proof of the amount of such damages would be costly and inconvenient. The liquidated damages will be Seller's sole remedy for Buyer's default or breach and Buyer will have no other or further obligation or liability under the Contract to Seller. The Earnest Money will be paid pursuant to Paragraph 1.2, and there will be no further obligation to be borne, performed, or enforced by any party.

2.13 Buyer's Remedies. If Seller fails to comply with this Contract for any reason, except Buyer's default, Buyer may either:

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

### 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 ANY 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. 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. THIS PARAGRAPH WILL SURVIVE THE CLOSING.

#### Article 4

##### 4.1 1031 Exchange.

- (a) Buyer is aware that Seller may perform a 1031 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 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 under this Contract must be in writing and delivered 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 in this Contract, but each party may change his address by written notice.

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 or the opportunity for same in carefully reviewing, discussing, and considering all the terms of this Contract. This Contract will be construed as if prepared by counsel of both Seller and Buyer.

4.6 Attorney's Fees. Any party to this Contract, the Title Company, and/or Assiter who prevails in any legal proceeding brought in connection with this Contract or transaction will be entitled to recover court costs, reasonable attorney's fees, and other costs.

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

4.8 Non-Foreign Person Affidavit. At closing, Seller will 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.

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

4.10 Counterparts; Electronic Signatures. This document may be executed in counterparts. All counterparts together constitute one agreement binding on all the parties to this document even if not all the parties to this document have signed the original or the same counterparts. Execution and delivery of this document by facsimile or other electronic transmission will be binding on all the parties.

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. **ASSITER 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 6TH day of May, 25.

**DISCLOSURE**

**BUYER IS ADVISED THAT IF ANY BUILDINGS LOCATED ON THE PROPERTY WERE CONSTRUCTED BEFORE JANUARY 1, 1981; 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 BUILDINGS. THERE MAY BE OTHER HAZARDOUS MATERIALS IN THE BUILDINGS. BUYER ACCEPTS THE PROPERTY WITHOUT THE REMOVAL OF ANY ASBESTOS CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS.**

*[Signatures on following page]*

Address:

\_\_\_\_\_

Phone No.: \_\_\_\_\_

Email: \_\_\_\_\_

SELLER:

\_\_\_\_\_

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

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Address:

\_\_\_\_\_

Phone No.: \_\_\_\_\_

Email: \_\_\_\_\_

BUYER:

\_\_\_\_\_

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

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Address:

16650 Interstate 27  
Canyon, TX 79015-6157  
Phone No. (806) 655-3900  
Email: \_\_\_\_\_

APPROVED BY ASSITER:

ASSITER & ASSOCIATES, LLC,  
a Texas limited liability company

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

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

RECEIPT BY TITLE COMPANY

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

Dated: \_\_\_\_\_, \_\_\_\_\_.

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

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_