

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement"), dated as of August \_\_\_\_, 2023 (the "Effective Date), is by and between TYLER COUNTY VETERANS OF FOREIGN WARS (ROBERT M. PATE, POST NO. 2033) (the "Seller"), and COUNTY OF TYLER, TEXAS, a Texas governmental entity (the "Buyer").

### RECITALS

Seller is the owner of Real Property (as hereinafter defined) in Woodville in Tyler County, Texas, hereinafter more particularly described; and

Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Real Property for the consideration and upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the representations, warranties and agreements herein contained, the parties agree as follows:

### AGREEMENTS

1. **DEFINITIONS.** The following capitalized terms when used shall have the meaning indicated. Definitions of certain other capitalized terms may be set forth elsewhere in this Agreement.

"**Agreement**" shall mean and refer to this Purchase and Sale Agreement.

"**Authority**" means any governmental, regulatory or administrative body, agency or authority, any court or judicial authority or any public regulatory authority, whether international, national, federal, state or local.

"**Buyer**" shall mean and refer to County of Tyler, Texas, a Texas governmental entity.

"**Claim**" means any claim, lawsuit, demand, suit, litigation, proceeding, arbitration, or other dispute, whether civil, criminal, administrative or otherwise or any hearing, investigation or notice of a violation by an Authority.

"**Closing**" shall mean the event occurring on the Closing Date when the transactions contemplated by this Agreement are consummated and title to the Real Property is transferred by Seller to Buyer pursuant to the terms hereof.

"**Closing Date**" shall mean a date not later than December 1, 2023, or such other date mutually acceptable to the parties.

**"Material Adverse Effect"** means any circumstances, state of facts or matters which are reasonably expected to be adverse to the Real Property or their current use in a manner that is material to the value of the Real Property taken as whole, provided, however, that any adverse circumstance, state of facts or matter (a) primarily arising out of or resulting primarily from actions contemplated by the parties hereto in connection with this Agreement; or (b) that is primarily attributed to the announcement or performance of this Agreement or the transactions contemplated hereby shall not be deemed in themselves, either alone or in combination, to constitute, and shall not be taken into account in determining whether there has been, a material adverse effect.

**"Order"** means any decree, order, judgment, injunction, rule, requirement or consent of or by an Authority.

**"Permitted Exceptions"** means: liens for taxes not yet due and payable; oil, gas and mineral rights and interests vested in the Seller and any other Persons and all burdens on the surface estate associated therewith; any law, ordinance or governmental regulation (including building and zoning ordinances) that restricts, regulates or prohibits the occupancy, use or enjoyment of the Real Property, or regulates the character, dimensions or location of any improvements now or hereafter erected on the Real Property; ad valorem taxes for the year 2016, and subsequent years; and, all matters disclosed in the Commitment not duly objected to pursuant to Paragraph No. 6, below.

**"Person"** means any corporation, partnership, joint venture, limited partnership, limited liability company, organization, entity, Authority or natural person.

**"Real Property"** shall have the meaning set forth in Paragraph No. 2 of this Agreement.

**"Regulation"** means any rule, law, statute, regulation, ordinance, requirement or other binding action of or by an Authority.

**"Seller"** shall mean and refer to Tyler County Veterans of Foreign Wars (Robert M. Pate, Post No. 2033), as nominees and/or authorized agents for District #19 in the Department of Texas Veterans of Foreign Wars of the United States (P.O. Box 14468, Austin, Texas 78761) and Veterans of Foreign Wars of the United States (406 West 34<sup>th</sup> Street, Kansas City, Missouri 64111).

**"Title Company"** means Tyler County Title, LLC, 318 Dogwood, Woodville, Texas 75979.

## **2. PURCHASE AND SALE OF REAL PROPERTY.**

(a) Upon the terms and subject to the conditions contained herein, Seller agrees to sell, assign, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and accept from the Seller, the following described real property (the "Real Property"). The Real Property includes: (a) all remaining buildings, improvements, fixtures and attachments thereto and thereon, if any; (b) to the extent their transfer is permitted by law or contract, all governmental

licenses, permits, approvals, license applications and license amendment applications, if any, related to the real estate; and (c) any other privileges, easements and other rights related thereto. The Real Property does not include any oil, gas, and/or mineral rights and associated privileges, easements and other rights related thereto, all of which are retained by the Seller. The Real Property is further described more particularly shown on Exhibit "A".

### 3. CONSIDERATION

(a) **PURCHASE PRICE.** The consideration for the purchase of the Real Property shall be FIVE HUNDRED FIFTY-FIVE THOUSAND AND NO/100 U.S. DOLLARS (US\$555,000.00).

(b) **DEPOSIT.** Buyer shall deposit FIVE THOUSAND AND NO/100 U.S. DOLLARS (US\$5,000.00) with the Title Company (to be held in a non-interest bearing account) on or before the expiration of five (5) business days after the last party to this Agreement executes the same; these funds shall serve as an earnest money deposit for this transaction ("Deposit"). On the Closing Date, the Deposit shall be applied to Buyer's obligation to pay the Purchase Price.

(c) **PAYMENT.** On or before the Closing Date, Buyer shall pay to Seller in cash, in immediately available U.S. funds by wire transfer pursuant to instructions provided by Seller, subject to the credit for the Deposit (which will also be paid to Seller) and the proration of ad valorem taxes on the Real Property as of the Closing Date, a sum equal to the Purchase Price.

(d) **CLOSING COSTS AND PRORATIONS.** All ad valorem state and local real property taxes and assessments and personal property taxes and assessments, if any, and other charges applicable to the Real Property for the current year, shall be prorated to the Closing Date based on the 2023 tax rate. Buyer shall pay the premium thereon, and all other expenses relating to the acquisition of a title insurance policy and a survey (if required). Furthermore, except as otherwise specifically provided herein, the Seller on the one hand, and the Buyer on the other, shall each pay their respective expenses relating to this transaction including fees and disbursements of their respective counsel, accountants and financial advisors, whether or not the transactions contemplated by this Agreement are consummated.

(e) **NO REPRESENTATIONS.** BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT (1) EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY CLOSING DOCUMENT REQUIRED HEREBY, SELLER IS TRANSFERRING THE REAL PROPERTY "AS IS, WHERE IS AND WITH ALL FAULTS"; AND (2) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH HEREIN, OR IN ANY CLOSING DOCUMENT REQUIRED HEREBY, NEITHER SELLER NOR ANY OTHER PERSON IS MAKING, AND BUYER IS NOT RELYING ON, ANY REPRESENTATIONS OR WARRANTIES (EXCEPTING WARRANTIES OF TITLE) OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING ANY OF THE REAL PROPERTY OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO BUYER BY ANY PERSON OTHER THAN SELLER OR OTHERWISE OBTAINED BY BUYER CONCERNING ANY OF THE REAL PROPERTY OR THE TRANSACTIONS

CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY REPRESENTATIONS OR WARRANTIES RELATING TO: (i) THE QUALITY, NATURE, HABITABILITY, MERCHANTABILITY, USE, OPERATION, VALUE, MARKETABILITY, ADEQUACY OR PHYSICAL CONDITION OF ANY OF THE REAL PROPERTY OR ANY ASPECT OR PORTION THEREOF, INCLUDING STRUCTURAL ELEMENTS OF ANY BUILDINGS OR IMPROVEMENTS, ACCESS, SEWAGE, WATER AND UTILITY SYSTEMS, APPLIANCES, SOILS, GEOLOGY, SURFACE WATER, OR (ii) THE MAGNITUDE OR DIMENSIONS OF THE REAL PROPERTY; OR (iii) THE DEVELOPMENT OR INCOME POTENTIAL, OR RIGHTS OF OR RELATING TO, THE REAL PROPERTY, OR THE FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE REAL PROPERTY FOR ANY PARTICULAR PURPOSE.

(f) **NO LIABILITIES ASSUMED.** Buyer shall not assume (and Seller shall indemnify and hold harmless Buyer from and against) any of Seller's liabilities, obligations, litigation, or claims having their inception on or before the Closing Date or arising from any title policy issued, any act occurring, or any omission failing to occur on or before the Closing Date, unless otherwise expressly and specifically provided for under the terms of this Agreement. Further, except as hereafter provided, Buyer shall not assume any of Seller's liabilities or obligations to pay any taxes or assessments levied by, charged by, or accrued to a federal, state, or local government or agency on or before the Closing Date. Provided, however, it is understood and agreed that any and all ad valorem taxes for the year 2023 on the Real Property the subject of this Agreement being sold by Seller to Buyer shall be prorated as of the Closing Date and that the Buyer will be responsible for, and pay, the 2023 ad valorem taxes on all of such Real Property and Buyer further agrees to indemnify and hold harmless the Seller from and against any and all responsibility or liability whatsoever arising out of, or having to do with, the payment of said 2023 ad valorem taxes, unless otherwise agreed to by the parties in writing. An appropriate provision pertaining to the Buyer's agreement to pay such 2023 ad valorem taxes and agreement to indemnify and hold harmless the Seller from and against any and all responsibility or liability whatsoever arising out of, and having to do with, the payment of said 2023 ad valorem taxes will be incorporated into the Warranty Deed referenced in Paragraph No. 7(b)(i).

#### 4. **SELLER REPRESENTATIONS AND WARRANTIES.**

Seller represents and warrants to Buyer on the Effective Date and on the Closing Date as follows:

(a) **COMPANY ORGANIZATION.** Seller is entity or association duly organized, validly existing and in good standing under Texas law and authorized to transact business in the State of Texas, with full power and authority to sell the Real Property.

(b) **AUTHORIZATION.** Seller has full power and authority to enter into this Agreement to which it is a party, to perform its obligations hereunder, and to consummate the transactions contemplated hereby and thereby, including, without limitation, the execution and delivery of this Agreement, general conveyances, assignments, and other documents and instruments evidencing the sale and transfer of the Real Property or delivered in accordance with this Agreement. Seller has taken all necessary and appropriate company action with respect to the

execution and delivery of this Agreement. This Agreement constitutes a valid and binding obligation of Seller and the parties hereto, enforceable in accordance with its terms.

(c) **TITLE AND RELATED MATTERS.** On the Closing Date, Seller will have good and marketable title to the Real Property to be transferred, free and clear of all liens and Claims, other than the Permitted Exceptions.

(d) **LITIGATION.** There is no Claim pending or, to Seller's knowledge, threatened against Seller which, if adversely determined, would have a Material Adverse Effect on Seller's or Buyer's use of the Real Property, nor is there any Order, decree, consent decree, settlement or other similar directive or agreement respecting a dispute outstanding against Seller which would likely have a Material Adverse Effect on Seller's or Buyer's use of the Real Property.

(e) **COMPLIANCE WITH LAW AND APPLICABLE GOVERNMENT REGULATIONS.** To Seller's knowledge, Seller is presently in substantial compliance with all applicable Regulations and Orders in relation to the Real Property. To Seller's knowledge, there are no Claims pending, or threatened, nor has Seller received any written notice regarding any violations of any Regulations and Orders enforced by any Authority claiming jurisdiction over Seller in relation to the Real Property.

(f) **BROKERS.** Seller has not employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders' fees in connection with the transactions contemplated herein. Seller agrees to indemnify and hold harmless Buyer from and against any and all such claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transactions contemplated hereby, insofar as any such claim or demand is based upon a contact or commitment of the Seller.

(g) **NO ADVERSE FACTS OR CONDITIONS.** To Seller's knowledge, there is no significant adverse fact or condition relating to the Real Property that has not been specifically disclosed in writing by Seller to Buyer. Specifically, but without limiting the generality of the preceding sentence, Seller has no knowledge of any adverse fact or condition relating to the Real Property that would preclude or adversely affect Buyer's intended use thereof.

(h) **CONDITION OF THE REAL PROPERTY.** SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OR STATE OF REPAIR OF THE REAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(i) **BANKRUPTCY/INSOLVENCY.** There is no bankruptcy or insolvency proceeding, voluntary or involuntary, pending against Seller.

(j) **AD VALOREM TAXES.** All ad valorem real property taxes and assessments pertaining to the Real Property for the year 2022 and all prior years have been paid.

**5. BUYER REPRESENTATIONS AND WARRANTIES.**

Buyer represents and warrants to Seller on the Effective Date and on the Closing Date as follows:

(a) **ORGANIZATION.** Buyer is a Texas governmental entity duly organized, validly existing and in good standing under Texas law and authorized to transact business in the State of Texas, with full power and authority to own the Real Property, subject to the Buyer's acquisition of all requisite licenses, permits and approvals required by any governmental agency, if any. With respect to any such licenses, permits and approvals that may need to be obtained by Buyer, Buyer agrees not to apply for or pursue the acquisition thereof until after the Closing Date.

(b) **AUTHORIZATION.** Pursuant to a resolution approved by the County Commissioners of Tyler County, Texas in a Commissioners' Meeting held on \_\_\_\_\_, 2023, Buyer has full power and authority to enter into this Agreement, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby, including, without limitation, the execution and delivery of this Agreement and other documents and instruments evidencing the sale and transfer of the Real Property or delivered in accordance with this Agreement. Buyer has taken all necessary and appropriate action with respect to the execution and delivery of this Agreement. This Agreement constitutes a valid and binding obligation of Buyer and the parties hereto, enforceable in accordance with its terms.

(c) **BROKERS.** Buyer has not employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders' fees in connection with the transactions contemplated herein. Buyer agrees to indemnify and hold harmless Seller from and against any and all such claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transactions contemplated hereby, insofar as any such claim or demand is based upon a contract or commitment of the Buyer.

(d) **LITIGATION.** There is no Claim pending or, to Buyer's knowledge, threatened against Buyer which, if adversely determined, would have a Material Adverse Effect on Seller's or Buyer's use of the Real Property, nor is there any Order, decree, consent decree, settlement or other similar directive or agreement respecting a dispute outstanding against Seller which would likely have a Material Adverse Effect on Seller's or Buyer's use of the Real Property.

(e) **FINANCIAL CAPABILITY.** Buyer has sufficient cash or borrowing capacity under existing credit facilities to pay the Purchase Price and otherwise perform its obligations hereunder and to pay all fees, costs and expenses for which it is responsible in connection with the transactions contemplated in this Agreement.

**6. TITLE INSURANCE AND SURVEY.**

(a) **TITLE COMMITMENT.** Buyer shall obtain, within fourteen (14) days of the Effective Date, a preliminary commitment (including copies of all exception documents, if desired) for title insurance for the Real Property from the Title Company ("Commitment"). The

Buyer agrees that the Real Property will be conveyed by Seller to Buyer subject to the Permitted Exceptions. If the Commitment discloses any objections to the status or condition of the title to the Real Property, other than the Permitted Exceptions, and Buyer shall have advised Seller of all such objections ("Title Objections") within five (5) business days after Buyer's receipt of the Commitment, Seller may, in its sole judgment, attempt to cure any Title Objections raised by Buyer. In the event Buyer does not make any objections to title by giving Seller written notice thereof within the time period provided for herein, Buyer shall be deemed to have approved the condition of the title as shown in the Commitment. In the event Buyer does make objections to title, but Seller is unable to or does not cure any of Buyer's Title Objections prior to the Closing Date, Buyer may, at its option, either (i) accept title subject to the objections raised by Buyer which remain uncured, without an adjustment in the Purchase Price because of such objections and proceed with the Closing, in which event said objections shall be deemed to be waived for all purposes, or (ii) terminate this Agreement by giving written notice thereof to Seller at or prior to the Closing Date, in which event the Deposit shall immediately be returned to Buyer by the Title Company, this Agreement shall be of no further force or effect and the parties shall have no further rights or obligations one to the other hereunder. Any objections to title that are either accepted or waived by Buyer as aforesaid shall be additional "Permitted Exceptions".

(b) **TITLE INSURANCE.** At the Closing, Buyer shall obtain a Texas standard coverage owner's policy of title insurance issued by the Title Company, insuring to Buyer that title to the Real Property is vested in Buyer in fee simple, free and clear of all liens and encumbrances except the Permitted Exceptions. The policy shall provide loss coverage to Buyer in an amount to be determined by Buyer, in Buyer's sole judgment and discretion.

(c) **SURVEY.** At Buyer's option, no later than seven (7) days prior to the Closing Date, Buyer may obtain a new survey of the Property at Buyer's expense and provide that survey to the Title Company. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

## 7. **CLOSING.**

(a) **TIME AND PLACE.** The Closing of the transactions contemplated by this Agreement shall take place at the offices of the Title Company at 10:00 a.m. on the Closing Date, unless the parties agree otherwise.

(b) **DELIVERIES AT THE CLOSING BY THE SELLER.** At the Closing, the Seller shall deliver to the Buyer the following:

(i) A duly executed General Warranty Deed whereby the Real Property is conveyed by Seller to Buyer, subject to the Permitted Exceptions, and otherwise in a form satisfactory and acceptable to Buyer and Seller;

(ii) An affidavit of debts and liens certifying that there are not liens encumbering the property that will not be paid off as part of Closing;

(iii) A entity resolution according to the governing documents for the Seller evidencing that the Seller has authorized the transactions contemplated by this Agreement and further evidencing who is authorized to sign documents on behalf of the Seller;

(iv) A Certificate of Good Standing from the Texas Comptroller of Public Accounts evidencing that the Seller and its General Partner are each, in fact, a company in good standing in the State of Texas;

(v) A "FIRPTA Certification", evidencing that the Seller is not a foreign person as defined in Section 1445(f)(3) of the Internal Revenue Code and the regulations issued thereunder;

(vi) Tax Certificates from the appropriate taxing entities/authorities evidencing that all ad valorem taxes and personal property taxes (if any) on the Real Property for the year 2012, and all prior years, have been paid; and

(vii) Such other and additional documents as are reasonably required by the Title Company or necessary to carry out this Agreement.

(c) **DELIVERIES AT CLOSING BY THE BUYER.** At the Closing the Buyer shall deliver to the Seller the following:

(i) Immediately available funds by wire transfer to Seller, in a sum equal to the Purchase Price to be paid on the Closing Date at the Closing, subject to the credit for the Deposit (which will also be paid to Seller) and the proration of ad valorem taxes on the Real Property as of the Closing Date, as provided in Paragraph No. 3(d) hereof. (Prior to the Closing, Seller shall provide to Buyer specific written wire transfer instructions for this purpose);

(ii) A certificate of the Buyer to the effect that the representations and warranties of the Buyer contained herein were true and correct when made and are true and correct at and as of the Closing Date and that Buyer has performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date;

(iii) A Resolution evidencing that the Tyler County Commissioners Court for the Buyer has authorized the transactions contemplated by this Agreement and further evidencing who is authorized to sign documents on behalf of Buyer; and

(iv) Such other and additional documents as are reasonably required by the Title Company or necessary to carry out this Agreement.

**8. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE.** Unless waived by Seller in writing, the obligation of the Seller to complete the Closing of the transactions provided in this Agreement is subject to, and contingent upon, the fulfillment, prior to or on the Closing Date, of each of the following conditions:



- (a) Buyer having paid at Closing the Purchase Price pursuant to Paragraph 3(c);
- (b) There shall have been no material breach by Buyer in the performance of any of its covenants;
- (c) The Buyer's representations and warranties contained or referred to in this Agreement shall be true and correct in all material respects on the Closing Date as if made on the Effective Date; and
- (d) All company action necessary to authorize the execution, delivery and performance of this Agreement by Buyer shall have been duly and validly taken.

If these conditions are not satisfied as of the Closing Date, Seller shall be entitled to terminate this Agreement, the Deposit shall be returned to Buyer and this Agreement shall be of no further force or effect and the parties shall have no further rights or obligations one to the other hereunder.

**9. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE.** Unless waived by Buyer in writing, the obligation of Buyer to complete the Closing of the transactions provided in this Agreement is subject to the fulfillment, prior to or on the Preliminary Closing Date, of the following conditions:

- (a) Seller's execution and delivery at the Closing of the General Warranty Deed referenced in Paragraph No. 7(b)(i), above;
- (b) Seller's execution and delivery of an affidavit of debts and liens referenced in Paragraph No. 7(b)(ii);
- (c) There shall have been no material breach by Seller in the performance of any of its covenants;
- (d) The Seller's representations and warranties contained or referred to in this Agreement shall be true and correct in all material respects on the Closing Date as if made on the Effective Date; and
- (e) All entity action necessary to authorize the execution, delivery and performance of this Agreement by Seller shall have been duly and validly taken.

If these conditions are not satisfied as of the Closing Date, Buyer shall be entitled to terminate this Agreement, the Deposit shall be returned to Buyer and this Agreement shall be of no further force or effect and the parties shall have no further rights or obligations one to the other hereunder.

**10. CONDEMNATION OR CASUALTY.**

(a) In the event all or any portion of the Real Property is taken by the exercise of the power of eminent domain prior to the Closing Date or any such taking is threatened prior to the Closing Date, Seller shall immediately notify Buyer of such taking or threatened taking ("Condemnation(s)") and shall provide Buyer with copies of all documents relating thereto. In the event any such Condemnation(s) involves a value of the Real Property greater than 10% of the Purchase Price (the "Condemnation Value"), Buyer may terminate this Agreement. In such case, the Deposit shall be returned to Buyer, and the parties shall be released from all further obligations and liabilities under this Agreement.

(b) In the event any such Condemnation Value prior to the Closing Date is equal to or less than 10% of the Purchase Price, the transactions contemplated hereby shall, subject to the other terms and conditions of this Agreement, close and all awards or other payments on account of such Condemnation shall belong to Buyer unless this Agreement is otherwise terminated, in which case all awards or other payments on account of such taking shall belong to Seller. Pending Closing, the parties shall cooperate in good faith in advancing the claim against the condemning authority involved. All costs related thereto shall be paid by the party incurring such cost.

(c) If between the date hereof and immediately prior to the Closing Date, the Real Property having a value of greater than 10% of the Purchase Price is destroyed by fire, flood, wind, tornado or Act of God, Buyer shall have the right to terminate this Agreement prior to the Closing Date by written notice to Seller. In such case the Deposit shall be returned to Buyer, and the parties shall be released from all further obligations and liabilities under this Agreement. If any such casualty loss is equal to or less than 10% of the Purchase Price, then the Purchase Price shall be reduced accordingly at the Closing. Risk of loss shall pass from Seller to Buyer on the Closing Date.

## **11. FAILURE TO CLOSE/DEFAULT.**

(a) **SELLER DEFAULT.** If the Closing shall not have occurred due to Seller's default hereunder, Buyer will be entitled, as its sole and exclusive remedy, to cancel this Agreement, recover the Deposit without interest, and the parties shall be released from all further obligations and liabilities under this Agreement.

(b) **BUYER DEFAULT.** If the Closing shall not have occurred due to Buyer's default hereunder, Seller will be entitled, as its sole and exclusive remedy, to cancel this Agreement, retain the Deposit as liquidated damages to compensate Seller for its losses incurred in taking the Real Property off the market, and the parties shall be released from all further obligations and liabilities under this Agreement. Buyer expressly agrees that the retention of the Deposit by Seller represents a reasonable estimation of the damages in the event of Buyer's default, that actual damages may be difficult to ascertain and that this provision does not constitute a penalty.

**12. COMMERCIALY REASONABLE EFFORTS.** Subject to the terms and conditions of this Agreement, the parties covenant and agree that they will use their commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement.

**13. MISCELLANEOUS.**

(a) **NOTICES.** All notices required or permitted to be given hereunder, or given in regard to this Agreement by one party to the other, shall be in writing and the same shall be given and be deemed to have been served, given and received (i) if delivered by hand, facsimile transmission or e-mail, when delivered in person or the transmission or the e-mail is received at the address, facsimile number or e-mail address set forth hereinafter for the party to whom notice is given, or (ii) if mailed, when placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. Any party may change its address, facsimile number or e-mail address for notices by giving five days advance written notice to the other party hereto in the manner provided for herein. Until changed in the manner provided herein, the parties' respective addresses, facsimile numbers and e-mail addresses for notices hereunder are as follows:

If to Seller: Tyler County Veterans of Foreign Wars (Robert M. Pate, Post No. 2033)

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to Buyer: County of Tyler, Texas  
Courthouse  
100 West Bluff  
Woodville, Texas 75979  
Telephone:  
Facsimile:  
E-mail:

With copy to Buyer's Attorney:

Thomas D. Fortenberry, Attorney at Law  
P.O. Box 2099  
Woodville, Texas 75979  
Telephone: (409) 283-2811  
E-Mail: tom@tflawoffices.com

(b) **EXPENSES.** Except as otherwise expressly provided herein, each party shall pay any expenses incurred by it incident to this Agreement.

(c) **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective successors and permitted assigns, but shall not be assignable or delegable in whole or in part without the prior written consent of the other party, which shall not be unreasonably withheld.

(d) **WAIVER.** Buyer and Seller by written notice to the other, may (a) extend the time for performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations or warranties of the other in this Agreement or in any document delivered pursuant to this Agreement; (c) waive compliance with any of the conditions or covenants of the other in this Agreement or (d) waive or modify performance of any of the obligations of the other under this Agreement; however, no party may, without the consent of the other, make or grant such extension of time, waiver of inaccuracies or compliance, or waiver or modification of performance with respect to its own obligations, representations, warranties, conditions, or covenants. Except as provided in the preceding sentence, no action taken pursuant to this Agreement shall be deemed a waiver of compliance with any representations, warranties, covenants or agreements in this Agreement and shall not operate or be construed as a waiver of any subsequent breach.

(e) **ENTIRE AGREEMENT.** This Agreement and the exhibits, which are expressly incorporated herein, supersede any other agreement, whether written or oral, that may have been made or entered into by Seller or Buyer relating to the Real Property. This Agreement constitutes the entire agreement by and between the parties, and there are no other agreements, representations or commitments except as referenced herein.

(f) **AMENDMENTS.** This Agreement may not be modified or amended except by the written agreement of the parties.

(g) **APPLICABLE LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to its conflict of law principles. Furthermore, venue for any cause of action arising out of, or having to do with, this Agreement shall be in Tyler County, Texas.

(h) **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile and electronic copies of signatures shall be deemed as effective as original signatures.

(i) **ATTORNEY'S FEES.** If any legal action or other proceeding is brought by any party against the other party for the enforcement of this Agreement or because of an alleged dispute, death or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover from the other party its actual attorneys' fees, expert fees and other costs incurred in that action or proceeding, or on any appeal, in addition to any other relief to which it may be entitled. The prevailing party will be deemed to be the party to have won on the issues with the greatest value as determined by the court(s).

(j) **SEVERABILITY**. If any provision, phrase or other portion of this Agreement shall be deemed by any court of competent jurisdiction to be invalid, illegal, or unenforceable, in whole or in part, and such determination should become final, such provision, phrase or other portion shall be deemed to be severed or limited, but only to the extent required to render the remaining provisions hereof enforceable, provided that the severing of any such provision will not materially change the substance of this Agreement as so amended, this Agreement shall be enforced to the fullest extent possible to give effect to the intention of the parties expressed herein.

(k) **NO THIRD-PARTY BENEFICIARIES**. Nothing in this Agreement shall be construed to create any rights in any third party against either Seller or Buyer.

(l) **FURTHER ASSURANCES**. Each party shall at any time after Closing execute and deliver to the other party all such additional instruments of conveyance and assignment, certificates or other documents as such other party may reasonably request in order to further the intent of this Agreement.

(m) **HEADINGS AND CAPTIONS**. Subject headings and captions are included for convenience purposes only and shall not affect the interpretation of this Agreement.

(n) **GENDER AND PRONOUNS**. Throughout this Agreement, the masculine shall include the feminine and neuter and the singular shall include the plural and vice versa as the context requires.

(o) **CONFIDENTIALITY**. To the fullest extent permitted under applicable law, the parties hereto shall keep the non-public terms, conditions and provisions of this Agreement confidential; however, the parties may release information as required by applicable law, and to their respective lenders, partners, employees, attorneys, consultants and contractors so long as any such party is made aware of the provisions of this subparagraph.

(p) **TIME IS OF THE ESSENCE**. Time is of the essence of this Agreement.

(q) **SURVIVAL OF COVENANTS AND AGREEMENTS**. Notwithstanding any presumption to the contrary, but subject to any provision relating to survival set forth elsewhere in this Agreement, covenants, conditions, representations and warranties contained in this Agreement, which, by their nature, impliedly or expressly involve performance in any particularity after Closing, or which cannot reasonably be ascertained to have been fully performed until after Closing, shall survive Closing and be fully enforceable thereafter.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

SELLER:

Tyler County Veterans of Foreign Wars (Robert M.  
Pate, Post No. 2033)

By: \_\_\_\_\_  
Clarence Dominy, as Commander

By: \_\_\_\_\_  
Dale Sellers, as Senior Vice Commander

By: \_\_\_\_\_  
James T. Hale, as Quartermaster/Adjutant

EXECUTED this 7<sup>th</sup> day of August, 2023.

BUYER:

County of Tyler, Texas

By: 

Milton Powers, as County Judge

# EXHIBIT "A"

