



**CONTRACT FOR SALE OF REAL ESTATE
USING MODIFIED SEALED BID METHOD**

Terms and Definitions

Date: _____

Owner: _____

Owner's Address: _____

Telephone No.: _____

Facsimile No.: _____

E-mail: _____

Broker: **James Burton Clem**

Broker's License No.: 530921

Broker's Address: Gerald Haire Realty
4609 Texas Blvd
Texarkana, TX 75501
Telephone No.: 903-791-1088
Website: www.hairerealty.com

Auctioneer: **John K Nutt**

Auctioneer's License No.: 11712

Auctioneer's Address: 1064 FM 1397
Texarkana, TX 75503
Telephone No.: 903-824-0581
Website: www.nuttauction.com



Property: _____

Legal Description: _____

Agreement

Owner, Broker, and Auctioneer agree as follows:

1. Property to be auctioned. Owner appoints Broker/Auctioneer as Owner's sole and exclusive real estate agent and grants to Broker/Auctioneer the exclusive right to sell the Property in its entirety by auction conducted by Auctioneer.

2. Auction Date. The Property will be sold at public auction, to be conducted on November 15, 2017 @ 10:00 am or an alternate date agreed upon in writing, and at a time and location to be reasonably agreed upon by Broker, Auctioneer, and Owner.

3. Type of Sale. Owner agrees to sell the Property (*choose (a) or (b)*):

(a) To the highest bidder, "**ABSOLUTE**" with no minimum, reservation, buy-backs, or persons bidding for Owner.

(b) Owner reserves the right to reject any bid at the auction that does not meet or exceed \$_____.

4. Terms of Sale. The following are the terms and conditions upon which the Property shall be offered for sale:

(a) Successful bidder shall execute an offer to purchase following the auction on an Earnest Money Contract form (**the "E.M. Contract"**) mutually acceptable to Broker/Auctioneer and Owner.

(b) 10% as down payment shall be paid by the buyer in cash, personal check, corporate check, or cashier's check upon execution of an offer to purchase. The remainder of the purchase price shall be payable in immediately available funds at closing.

(c) Closing will take place within approximately thirty (30) days after auction day or as soon thereafter as reasonably possible.

(d) Before closing, Owner shall have paid all ad valorem taxes on the Property for years ending before the closing date.



- (e) All ad valorem taxes on the Property for the year of closing will be prorated to the date of closing.
- (f) Possession of the Property will be delivered to buyer at closing.
- (g) Owner shall terminate any tenant leases in writing in accordance with Texas law and provide copies of the termination notices to Broker/Auctioneer as soon as practicable following execution of this Contract.
- (h) The Property may be offered in individual tracts, combinations, and as a total unit. The Property will be sold in the manner resulting in the highest total sale price.
- (i) Owner will will not pay for the cost of a survey of the Property.
- (j) The Property will be sold on an "AS IS, WHERE IS" basis, and no warranty or representation, either express or implied, will be given to any bidder or buyer unless given in writing by Owner.
- (k) Calling the sale by auction and the increments of bidding will be at the direction and discretion of Auctioneer.
- (l) Broker/Auctioneer reserves the right to preclude any person from bidding if there is any question as to the person's credentials, fitness, etc. All decisions of the auctioneer at the auction are final.
- (m) The auction bid shall be accepted by Owner on auction day if at all possible.
- (n) Unless otherwise provided herein, the sale of the Property shall include all water rights, oil, gas, and other minerals, if any, owned by Owner.

5. Title Exceptions. The Property will be conveyed subject only to the following exceptions, reservations, conditions, and restrictions:

- (a) Minerals and royalties:
 - (1) presently outstanding in third parties: On Record at _____
County Clerk's Office.
 - (2) to be additionally retained by Seller: On Record at _____
County Clerk's Office.
- (b) Mineral leases: On Record at _____
County Clerk's Office.



- (c) Surface leases: On Record at _____
County Clerk's Office
- (d) Easements: On Record at _____
County Clerk's Office.
- (e) Restrictions or other exceptions: On Record at _____
County Clerk's Office.

6. Title Policy. Owner shall furnish the successful bidder at Owner's expense an Owner Policy of Title Insurance in the amount of the purchase price. Owner shall provide good and indefeasible title to the Property and execute a general warranty deed conveying the Property to the buyer subject only to the exceptions set forth in Paragraph 5. In no circumstance shall Broker or Auctioneer or their agents be liable for title matters.

7. Marketing. Broker/Auctioneer shall use all reasonable efforts in advertising and selling the Property by public auction, in a fashion consistent with the Marketing Budget (*defined in Paragraph 8*), for the highest attainable price including without limitation advertising the Property, the preparation of signs, brochures, photographs and other forms of advertising and promotional activity.

8. Marketing Budget. Upon execution of this Contract, Owner shall deposit with Broker/Auctioneer \$350 to pay marketing & make ready expenses not to exceed \$ (the "**Marketing Budget**"). Such expenses shall include but are not limited to advertising, photography, preparation and production of auction brochures, signage, mailings, postage, telemarketing, room rental and refreshments for the inspection dates and the auction day, the preparation and duplication bidders packets, other related information and property make ready. Any expenses in excess of the Marketing Budget shall be the sole expense of Broker/Auctioneer. Upon written request by Owner, Broker/Auctioneer will furnish a complete accounting of marketing expenses. If the entire Marketing Budget is not spent on marketing expenses, the remaining Marketing Budget will be returned to Owner as soon as all invoices have been paid.

9. Marketing Decisions. All marketing decisions with respect to the auction shall be made solely by Broker/Auctioneer.

10. Commission. At the closing of the sale of the Property to the buyer, Owner shall pay Broker ___% (the "**Commission Rate**") of the highest bid before adding the Buyer's Premium from all sales made during the period of this Contract or any extension thereof, whether such sales are made at public auction, by private sale, or in any other manner. If Owner elects to sell the Property as provided in Paragraph 3(b), and the highest bid does not exceed the amount stated in Paragraph 3(b) and Owner rejects the bid, Owner will not owe Broker/Auctioneer any commission. If Owner removes the Property from the sale before the auction, refuses to close the sale of the Property, or if title to the Property is unmarketable, Owner shall pay Broker/Auctioneer a commission calculated as follows:



- (a) if the type of sale was based upon Paragraph 3(a), the commission will be the product of the latest tax appraised value of the Property multiplied by the Commission Rate; or,
- (b) if the type of sale was based upon Paragraph 3(b), the commission will be the product of the reserve price set forth in Paragraph 3(b) multiplied by the Commission Rate.

11. Future Sale. If Owner elects to sell the Property as provided in Paragraph 3(b) and rejects the bid on the auction date, but within 180 days after the auction date, Owner enters into a contract to sell the Property or sells, exchanges, or otherwise transfers a legal or equitable interest (*excluding a lease with no right to purchase*) of the Property to (i) any person registered to bid at the auction or (ii) to any entity owned or controlled by any person registered to bid at the auction, Owner shall pay Broker/Auctioneer a commission equal to the product of the sales price paid by the buyer multiplied by the Commission Rate.

12. Participating Broker. No participating Broker fees will be paid for this auction.

13. Duties. Broker/Auctioneer shall use their best efforts to procure buyers for the Property and to sell the Property subject to the terms and conditions of this Contract at public auction. Broker/Auctioneer shall:

- (a) Review and compile relevant information concerning the Property and other relevant factors for dissemination to prospective buyers.
- (b) Prepare and distribute sale brochures and related information to prospective buyers to ensure an efficient and effective auction.
- (c) Conduct the auction.
- (d) Provide sales staff, computer equipment and appropriate programs, auctioneer, and related support staff as necessary at the discretion of Broker/Auctioneer for the efficient and effective conduct of the auction.

14. Broker/Auctioneer's Authority. Owner authorizes Broker/Auctioneer or Broker/Auctioneer's associates to:

- (a) advertise the Property by means and methods as Broker/Auctioneer determines;
- (b) place a "For Sale" or "Auction" sign on the Property in compliance with any state and local laws, rules, ordinances, restrictions, or covenants;
- (c) remove from the Property all other signs offering the Property for sale or lease;



- (d) furnish comparative marketing and sales information about other properties to prospective buyers;
- (e) disseminate information about the Property to other brokers and their associates;
- (f) enter the Property at reasonable times to show the Property to prospective buyers;
- (g) authorize other brokers and their associates, home inspectors, appraisers, and repair personnel to enter the Property at reasonable times to show the Property to prospective buyers or for other pertinent purposes;
- (h) obtain information from any holder of any note secured by a lien on the Property;
- (i) upon a final and closed sale of the Property, disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals; and,
- (j) accept earnest money and deposit the earnest money in trust in accordance with the terms of the E.M. Contract.

Broker/Auctioneer is not authorized to execute any document in the name of or on behalf of Owner with respect to the Property.

15. Owner's Representations and Additional Promises.

- (a) Owner represents that:
 - (1) Owner has fee simple title to and peaceable possession of the Property and all improvements and fixtures thereon and the legal capacity to convey the Property;
 - (2) Owner [] is [] is not a party to a listing agreement with another broker for the sale, exchange, or lease of the Property;
 - (3) no person or entity has any right to purchase, lease, or acquire the Property by virtue of an option, right of first refusal, or other agreement;
 - (4) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property;



- (5) the Property is not subject to the jurisdiction of any court; and,
- (6) all written information relating to the Property provided to Broker/Auctioneer by Owner is true and correct.

(b) Owner shall:

- (1) cooperate fully in good faith with Broker/Auctioneer to facilitate the showing and marketing of the Property;
- (2) not rent or lease the Property during the term of this Contract without the prior written approval of Broker/Auctioneer;
- (3) not negotiate with any prospective buyer who may contact Owner directly, but shall refer all prospective buyers to Broker/Auctioneer;
- (4) not enter into a listing agreement with another broker for the sale, exchange, or lease of the Property to become effective during the term of this Contract;
- (5) provide Broker/Auctioneer with copies of all leases or rental agreements, if any, pertaining to the Property and advise Broker/Auctioneer of any tenants moving in or out of the Property;
- (6) provide Broker/Auctioneer with copies of all environmental inspections and audits of the Property which Owner has in Owner's possession or under its control; and,
- (7) provide Broker/Auctioneer with information regarding septic systems, if any, located on the Property.

16. MUD and Rollback Tax Notice. Broker/Auctioneer notifies Owner that:

- (a) Section 50.301 of the Texas Water Code provides that Owner shall provide a statutorily prescribed written notice to a buyer, at or before the time of contract, if the Property lies, in whole or in part, in a Municipal Utility District (MUD) or water district (*failure to timely provide the notice may entitle the buyer to terminate a contract*); and,
- (b) a change in the use of the Property before or after closing may result in the denial of a special valuation of the Property and in the assessment of additional taxes (Rollback Taxes).

17. Exclusive Engagement. This is an exclusive agreement regarding sale of the Property between Owner and Broker/Auctioneer. Owner will exclusively use Broker/Auctioneer to



assist, consult, and advise regarding the sale of the Property. Up to and including the sale date, Owner shall refer all inquiries regarding the Property to Broker/Auctioneer.

18. Property Information. Broker and Auctioneer will not be liable for any representations made in relation to the Property that are based on information provided to them by Owner or other commercially reasonable source (*i.e. Consolidated Farm Services Agency, Owner, County Assessor, County Zoning Board, Water Districts, or similar agencies or organizations*).

19. Indemnification. Owner shall indemnify, defend, and hold Broker and Auctioneer harmless from any liability arising from (i) any inaccurate or incomplete information and materials provided by Owner or any other commercially reasonable source to Broker and Auctioneer with respect to the Property and (ii) any claims for personal injury or property damage with respect to the Property, including but not limited to all court costs and reasonable attorney's fees incurred by them with respect to such matters unless such claim arises from the sole gross negligence of Broker or Auctioneer or their respective agents or employees.

20. Owner's Disclosure of Property Condition. (*choose (a) or (b)*)

(a) OWNER'S DISCLOSURE NOTICE is attached as required by Section 5.008 of the Texas Property Code. Owner authorizes Broker/Auctioneer to furnish prospective buyers with a copy of the attached Owner's Disclosure Notice. Owner represents that the attached Owner's Disclosure Notice was completed to the best of Owner's knowledge and belief and that Owner has disclosed all known material defects and material facts affecting the Property in the attached Owner's Disclosure Notice. Owner agrees to amend the Owner's Disclosure Notice if any material change occurs during the term of this Contract.

(b) DEFECTS TO PROPERTY:

- (1) Owner is not aware of any latent structural or other material defect to the Property except:_____.
- (2) Owner is not aware of any environmental hazards or conditions affecting the Property which would violate any federal, state, or local statutes, regulations, ordinances, or other requirements; and more specifically, but without limitation, Owner represents that: (i) the Property is not now and never has been used for the storage or disposal of hazardous substances or materials or toxic waste, a dump site or landfill, or the housing of any underground tanks or drums; (ii) no radon, asbestos insulation or fireproofing, urea formaldehyde foam insulation, lead-based paint, or other pollutants or contaminants of any nature now exist or have ever existed on the Property; (iii) no wetlands, as defined by federal or state law or regulation are on the Property; and (iv) no threatened or endangered species or their habitat, as



defined by the Texas Parks and Wildlife Department or the U.S. Fish and Wildlife Service, are on the Property; except as follows:_____.

- (3) Owner is not aware that any part of the Property lies in a flood hazard or flood prone area except _____.

Owner shall protect, defend, indemnify, and hold harmless Broker/Auctioneer, their associates, and any other brokers or their associates, of and from any damages, costs, attorney's fees, and expenses arising from Owner's failure to disclose any material or relevant information or the giving of any incorrect information to Broker/Auctioneer, their associates, any other brokers or their associates, or prospective buyers.

21. **Limitation of Liability.** Broker/Auctioneer shall not be responsible in any manner for personal injury to Owner resulting from acts of third parties or loss of damage of personal or real property due to vandalism, theft, freezing water pipes, and any other damage or loss not caused by the sole negligence of Broker/Auctioneer. If the Property is or becomes vacant during the term of this Contract, Owner shall notify Owner's casualty insurance company and request a "Vacancy Clause" to cover the Property. Broker/Auctioneer shall not be responsible for the security of the Property nor for inspecting the Property on any periodic basis. Owner shall protect, defend, indemnify, and hold harmless Broker/Auctioneer, their associates, and any other brokers or their associates, of and from any damages, costs, attorney's fees, and expenses arising from acts of third parties or loss or damage of personal or real property due to vandalism, theft, freezing water pipes, and any other damage not caused by the negligence of Broker/Auctioneer.

22. **Escrow Authorization.** Owner authorizes and directs any escrow agent or closing agent authorized to close a transaction for the sale/purchase of the Property to collect and disburse the commission due Broker/Auctioneer.

23. **No Guarantee of Sale.** Neither Broker nor Auctioneer guarantees a sale of the Property. Broker and Auctioneer are not responsible if the auction fails to live up to expectations. Broker and Auctioneer have no obligation to analyze or review the creditworthiness of any bidders nor shall Broker or Auctioneer be liable for any default of any bidders.

24. **Insurance.** Owner is responsible for maintaining casualty insurance and liability insurance with respect to the Property in such amounts as Owner deems necessary.

25. **Possession of Property.** Neither Broker nor Auctioneer will have possession of the Property, nor shall they have any duty or obligation with respect to the management, maintenance, upkeep or repair of the Property.

26. **Parties Bound.** This Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.



27. Entire Agreement. This Contract contains the entire agreement between the parties and may not be modified or altered unless reduced to writing and signed by Owner, Broker, and Auctioneer.

28. Attorney's Fees. If it is necessary for either party to bring legal action to enforce this Contract, the successful party may recover reasonable attorney's fees.

29. Alternative Dispute Resolution. Owner, Auctioneer, and Broker shall submit in good faith to mediation before filing a lawsuit.

30. Non-Foreign Person Affidavit. At closing, Owner shall deliver to Broker/Auctioneer a duly executed affidavit stating (i) Owner's United States Taxpayer Identification Number for federal income tax purposes and (ii) that Owner is not a "foreign person" within the meaning of Section 1445, et seq., of the Internal Revenue Code.

31. Jurisdiction/Venue. Venue for the enforcement of this Contract will be in Stephenville, Erath County, Texas. This Contract shall be interpreted and governed by the laws of the State of Texas.

32. Written Communications. Any communications required by this Contract to be in written form shall be addressed to the respective parties at their addresses stated above or such other addresses as the parties may from time to time designate.

33. Signature by Facsimile. This Contract will be deemed fully executed by all parties if it bears the signatures of all parties. A FAX of the signature of a party will be binding on the signing party and delivery of this Contract by FAX will constitute delivery of this Contract for all purposes and will thus be binding on the party sending the FAX.

34. Counterparts. This Contract may be executed in counterparts and, if so executed, shall be valid, binding, and have the same effect as if all the parties hereto actually joined in and executed one and the same document.

35. Gender. Whenever the context requires, the singular includes the plural, the plural the singular, and the use of any gender includes all genders.

36. Paragraph Headings. The paragraph headings are included only for convenience and are not to be used to construe any provision of this Contract.

37. Legal Advice. **Neither Broker nor Auctioneer will provide legal advice to Owner with respect to the Property. Owner shall obtain and rely upon its own attorneys for legal advice with respect to the auction and all matters relating to the Property.**



{SIGNATURE PAGE}

OWNER:

Owner or Agent for the Owner

Owner or Agent for the Owner

BROKER:

James Burton Clem

AUCTIONEER:

John K Nutt