

## **EARNEST MONEY ESCROW AGREEMENT**

RE: Escrow Trust No. \_\_\_\_\_

DATE: \_\_\_\_\_, 2008

### **I. PARTIES**

- A. MHTC: Missouri Highways and Transportation Commission  
105 West Capitol Avenue  
Jefferson City, MO 65102
- B. Matula: David W. Matula and Patricia S. Matula  
9609 Robin Meadow  
Dallas, TX 75243
- C. Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- D. Escrow Holder: LandAmerica Commonwealth  
165 N. Meramec, Suite 200  
St. Louis, MO 63105

### **II. PRELIMINARY STATEMENTS**

A. Concurrently with the execution and delivery of this Earnest Money Escrow Agreement, MHTC, Matula and Purchaser have executed and delivered a certain Sale Agreement ("Sale Agreement"). MHTC and Matula shall be collectively referred to herein as "Sellers". Under the terms of the Agreement, Sellers have agreed to sell to Purchaser that certain parcel of land and improvements thereon located at 1045 Majestic Drive.

B. Pursuant to Paragraph 1(A) of the Sale Agreement, Purchaser is required to deposit with the Escrow Holder the sum of \_\_\_\_\_ (\$\_\_\_\_\_) ("Earnest Money") to be held by Escrow Holder pursuant to the terms and provisions of this Earnest Money Escrow Agreement.

### **III. DEPOSIT OF EARNEST MONEY; INVESTMENT DIRECTIONS**

A. Concurrently herewith, Purchaser has deposited the Earnest Money with the Escrow Holder in accordance with the Sale Agreement.

B. Escrow Holder is hereby directed not to invest the Earnest Money or any portion thereof. Unless otherwise provided pursuant to the provisions of Section IV hereof, such investment shall be for the benefit of Purchaser. The Federal Taxpayer Identification Number of the Purchaser is \_\_\_\_\_.

C. Sellers and Purchaser acknowledge and agree that Escrow Holder (i) is not a party to the Agreement; (ii) has no liability on a check until the check has cleared; (iii) shall not be liable for any losses of escrow funds caused by failure of any banking institution in which such funds have been deposited; and (iv) shall not be liable for any interest or other charge on the Earnest Money and shall be under no duty to invest or re-invest funds held by it at any time, unless otherwise instructed in separate written instructions.

### **IV. INSTRUCTIONS**

A. Escrow Holder is instructed to hold the Earnest Money, together with all interest earned thereon, until (i) the closing, in which event the Earnest Money shall be paid to the Sellers pursuant to the Sale Agreement, or (ii) in the event the Closing does not occur per the terms of the Sale Agreement, when the Escrow Holder is in receipt of (a) joint written direction from Sellers (or Sellers' Counsel) and Purchaser (or Purchaser's Counsel) or (b) an order, judgment or decree addressed to Escrow Holder which shall have been entered or issued by any court and which shall determine the disposition of the Earnest Money and all interest earned thereon.

B. Any party delivering a notice required or permitted hereunder shall simultaneously deliver copies of such notice to all parties listed in Section 1 of this Earnest Money Escrow Agreement. All notices required herein shall be either personally delivered, sent by certified or registered mail, postage prepaid, return receipt requested, or sent by overnight courier and shall, in all instances, be deemed to have been received upon delivery thereof.

C. Except as otherwise expressly set forth in this Earnest Money Escrow Agreement, Escrow Holder shall disregard any and all notices or warnings given by any of the parties hereto.

D. In case Escrow Holder obeys or complies with any order, judgment or decree of any court with respect to the Earnest Money, Escrow Holder shall not be liable to any of the parties hereto or any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated. In case of any suit or proceeding regarding this Earnest Money Escrow Agreement to which Escrow Holder is or may be at any time a party, Sellers and Purchaser shall each be liable for one third of all such costs, fees and expenses incurred or sustained by Escrow Holder and shall forthwith pay the same to Escrow Holder upon demand; provided, however, that in the event Escrow Holder is made a

party to any suit or proceeding between Sellers and Purchaser, the prevailing party in such suit or proceeding shall have no liability for the payment of Escrow Holder's costs, fees and expenses.

E. Escrow Holder agrees to disburse the Seller's proceeds from the Closing as follows:

(i) [insert dollar amount based on sales price] \_\_\_\_\_ to Matula (with Escrow Agent first paying the outstanding balance on the Deed of Trust recorded in Book 11740, Page 1752 to the holder of the note secured by the Deed of Trust); and

(ii) [insert dollar amount based on sales price] \_\_\_\_\_ to MHTC.

F. In no case shall the above mentioned deposits be surrendered except (i) in the manner specifically described in this Earnest Money Escrow Agreement; (ii) on an order signed by both Sellers (or Sellers' Counsel) and Purchaser (or Purchaser's Counsel); or (iii) in obedience to the process of order of a court as aforesaid.

G. All fees of Escrow Holder shall be charged to Purchaser.

H. The parties hereto agree that the Escrow Holder shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and, further, that Escrow Holder may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under applicable law and may use any part or all such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any, provided, however, nothing herein shall diminish Escrow Holder's obligation to apply the full amount of the deposits in accordance with the terms of this Earnest Money Escrow Agreement.

I. Any order, judgment or decree requiring the Escrow Holder to disburse the Earnest Money shall not be binding upon Purchaser or Sellers as to the ultimate disposition or the Earnest Money unless and until a final, non-appealable order, judgment or decree is entered by a court having jurisdiction thereof.

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J. This Earnest Money Escrow Agreement and all provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

SELLERS:

Missouri Highways and Transportation  
Commission (MHTC)

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

Title: \_\_\_\_\_

Attest: (SEAL)

\_\_\_\_\_  
Secretary to the Commission

Approved as to Form:

\_\_\_\_\_  
Commission Counsel

\_\_\_\_\_  
David W. Matula

\_\_\_\_\_  
Patricia S. Matula

PURCHASER:

\_\_\_\_\_

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

Accepted this \_\_\_\_\_ day of  
\_\_\_\_\_, 2008.

LandAmerica Commonwealth

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_