

**COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Metropolitan Transit Authority of Harris County, Texas  
Address: 1900 Main Street, 9<sup>th</sup> Floor, Houston, TX 77002, Attention: Gabriel J. Matos  
Phone: 713-652-8006 Fax: 713-758-7593  
Email: Gabriel.Matos@ridemetro.org

Buyer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

2. **PROPERTY:**

- A. "Property" means that real property situated in Harris County, Texas at 202 English St., Houston, Texas 77006, and that is legally described on the attached **Exhibit A** or as follows:

- B. Seller will sell and convey the Property together with:  
(1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any ~~minerals~~, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;  
(2) ~~Seller's interest in all leases, rents, and security deposits for all or part of the Property; and~~  
(3) ~~Seller's interest in all licenses and permits related to the Property.~~

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.) (If mineral rights are to be reserved an appropriate addendum should be attached.)*

3. **SALES PRICE:**

- A. At or before closing, Buyer will pay the following sales price for the Property:  
(1) Cash portion payable by Buyer at closing ..... \$ \_\_\_\_\_  
(2) Sum of all financing described in Paragraph 4 ..... \$ 0.00  
(3) Sales price (sum of 3A(1) and 3A(2)) ..... \$ \_\_\_\_\_

B. Adjustment to Sales Price: (Check (1) or (2) only.)

- ☒ (1) The sales price will not be adjusted based on a survey.  
☐ (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.  
(a) The sales price is calculated on the basis of \$ \_\_\_\_\_ per:  
☐ (i) square foot of ☐ total area ☐ net area.  
☐ (ii) acre of ☐ total area ☐ net area.  
(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:  
☐ (i) public roadways;  
☐ (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and  
☐ (iii) \_\_\_\_\_.  
(c) If the sales price is adjusted by more than \_\_\_\_\_ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within \_\_\_\_ days after the

terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

**4. FINANCING:** ~~Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:~~

- ☐ A. ~~Third Party Financing:~~ One or more third party loans in the total amount of \$\_\_\_\_\_. This contract:
- ☐ (1) ~~is not contingent upon Buyer obtaining third party financing.~~
- ☐ (2) ~~is contingent upon Buyer obtaining third party financing in accordance with the attached \_\_\_\_\_ Commercial Contract Financing Addendum.~~
- ☐ B. ~~Assumption:~~ In accordance with the attached Commercial Contract Financing Addendum, Buyer will \_\_\_\_\_ assume the existing promissory note secured by the Property, which balance at closing will be \$\_\_\_\_\_.
- ☐ C. ~~Seller Financing:~~ The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$\_\_\_\_\_.

**5. EARNEST MONEY:**

- A. Not later than three (3) business day after the Effective Date (defined below), Buyer must deposit \$\_\_\_\_\_ [must be > than 10% of purchase price] as earnest money with Ms. Susan Simmons, Charter Title Company ("Escrow Agent") at 1717 W. Loop South, Ste. 1200, Houston, Texas 77027 (address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money. Monies held in escrow will be credited towards the purchase price if/when the transaction is closed.

~~B. Buyer will deposit an additional amount of \$\_\_\_\_\_ with the Escrow Agent to be made part of the earnest money on or before:~~

- ☐ (i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or
- ☐ (ii) \_\_\_\_\_.

~~Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.~~

- C. Buyer may instruct the Escrow Agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

**6. TITLE POLICY AND SURVEY:**

**A. Title Policy:**

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Charter Title Company, Attn: Susan Simmons, 1717 W. Loop South, Ste. 1200, Houston, TX 77027 (title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
- (a) All matters affecting title as reflected in the title commitment and survey provided to Buyer prior to the effective date; and
- (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
- ☐ (a) will not be amended or deleted from the title policy.
- ☒ (b) may be amended to read "shortages in areas" at the expense of ☒ Buyer ☐ Seller.

- (3) Prior to the effective date, Seller has furnished Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. ~~Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.~~

**B. Survey:** Within 15 days after the effective date:

- ☒ (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- ☐ (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- ☐ (3) Prior to the effective date, Seller has delivered to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller \$\_\_\_\_\_ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

**C. Buyer's Objections to the Commitment and Survey:**

- ~~(1) Within 10 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by PEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.~~
- ~~(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7.B(1), will be refunded to Buyer.~~
- ~~(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.~~

**7. PROPERTY CONDITION:**

- A. **Present Condition:** ~~Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:~~ See Special Provisions Addendum.
- B. **Feasibility Period:** Subject to Section 7.C(1) below, Buyer may terminate this contract within 30 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)
- ☒ (1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$100.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7.B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7.B.

- ☐ (2) Not later than 3 days after the effective date, Buyer must pay Seller \$\_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7.B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7.B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7.B.

C. Inspections, Studies, or Assessments:

- (1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed the survey and environmental inspections of the Property (including all improvements and fixtures) desired by Buyer; provided, however, that notwithstanding any other provision in this contract, Buyer's right to terminate this contract shall be based solely on its reasonable determination, that the Property is not suitable for industrial or commercial uses due to title encumbrances or survey or environmental conditions making such uses of the Property economically unfeasible.
- (2) Buyer must:
- (a) employ only trained and qualified inspectors and assessors;
  - (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
  - (c) abide by any reasonable entry rules or requirements of Seller;
  - (d) not interfere with existing operations or occupants of the Property; and
  - (e) restore the Property to its original condition if altered due to any entry on the Property by Buyer, its surveyor, environmental consultant or any other contractor or representative of Buyer.
- (3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

- (1) Delivery of Property Information: Prior to the effective date, Seller has delivered to Buyer the following:

- ☒ (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases; NONE
- ☐ (b) ~~copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;~~
- ☒ (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property; NONE
- ☒ (d) copies property tax statements for the Property for the previous 2 calendar years; NONE
- ☒ (e) plats of the Property; NONE
- ☒ (f) copies of current utility capacity letters from the Property's water and sewer service provider; NONE

☐ (g) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (2) Return of Property Information: ~~If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all~~

~~inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.~~

- E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

**8. LEASES:**

- A. ~~Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:~~

- ~~(1) any failure by Seller to comply with Seller's obligations under the leases;~~
- ~~(2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;~~
- ~~(3) any advance sums paid by a tenant under any lease;~~
- ~~(4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and~~
- ~~(5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.~~

- B. Estoppel Certificates: Within \_\_\_\_\_ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 – Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

**9. BROKERS:**

\_\_\_\_\_  
Principal Broker \_\_\_\_\_ License No. \_\_\_\_\_

\_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail: \_\_\_\_\_

Principal Broker: (Check only one box.)

☐ represents Seller only.

☐ represents Buyer only.

\_\_\_\_\_  
Cooperating Broker \_\_\_\_\_ License No. \_\_\_\_\_

\_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail: \_\_\_\_\_

Cooperating Broker:

represents Buyer only.

**B. Fees:** *(Check only (1) or (2) below.)*

☐ ☐ (1) ~~Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.~~

☐ ☐ (2) ~~At the closing of this sale, Seller will pay:~~

Principal Broker a total cash fee of: \_\_\_\_\_ Cooperating Broker a total cash fee of: \_\_\_\_\_

☐ \_\_\_\_\_ % of the sales price. ☐ \_\_\_\_\_ % of the sales price.

☐ \_\_\_\_\_ ☐ \_\_\_\_\_.

The cash fees will be paid in \_\_\_\_\_ County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

~~NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.~~

~~C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.~~

**10. CLOSING:**

A. The date of the closing of the sale (closing date) will be on or before ~~the later of:~~

(1) ☒ 10 business days after the expiration of the feasibility period.

☐ \_\_\_\_\_ (specific date).

☐ \_\_\_\_\_.

~~(2) 7 days after objections made under Paragraph 6C have been cured or waived.~~

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

C. At closing, Seller will execute and deliver, at Seller's expense, a ☐ general ☒ special warranty deed in the form attached hereto as **Exhibit B**. ~~The deed must include a vendor's lien if any part of the sales price is financed.~~ The deed must convey good and marketable title to the Property and show no exceptions other than those listed in the Title Commitment referred to in Paragraph 6.A(3) or permitted under other provisions of this contract. Seller must convey the Property:

- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
- (2) without any assumed loans in default; and
- (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

D. At closing, Seller, at Seller's expense, will also deliver to Buyer:

- (1) tax statements showing no delinquent taxes on the Property;
- ~~(2) an assignment of all leases to or on the Property;~~
- ~~to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;~~
- (3) evidence that the person executing this contract is legally capable and authorized to bind Seller;
- (4) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
- (5) any notices, statements, certificates, affidavits, releases, and other documents required by this

contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.

E. At closing, Buyer will:

- (1) pay the sales price in immediately available funds acceptable to the escrow agent;
- (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
- (3) ~~sign and send to each tenant in a lease for any part of the Property a written statement that acknowledges Buyer has received and is responsible for the tenant's security deposit; and specifies the exact dollar amount of the security deposit;~~
- (4) ~~sign an assumption of all leases then in effect; and~~
- (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

~~F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.~~

11. **POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.
12. **SPECIAL PROVISIONS:** *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

This contract includes the Special Provisions set forth in **Exhibit C** attached hereto, all of which are incorporated herein for all purposes by reference thereto.

### 13. SALES EXPENSES:

A. Seller's Expenses: Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) ~~release of Seller's loan liability, if applicable;~~
- (3) tax statements or certificates;
- (4) preparation of the deed;
- (5) one-half of any escrow fee;
- (6) ~~costs to record any documents to cure title objections that Seller must cure; and~~
- (7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee;
- (6) other expenses that Buyer will pay under other provisions of this contract.

### 14. PRORATIONS:

A. Prorations:

- (1) ~~Interest on any assumed loan,~~ taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when

the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.

- ~~(3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.~~

~~B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Buyer. 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 14B survives closing.~~

~~C. 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 5 days after the rent is received. This Paragraph 14C survives closing.~~

## 15. DEFAULT:

- A. If Buyer fails to fully and timely comply with this contract, Buyer is in default and Seller may:
- (1) terminate this contract and receive the earnest money, as liquidated damages; and
  - (2) seek any other relief provided by law. Seller ☒ may ☐ may not enforce specific performance.

~~B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:~~

- ~~(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or~~  
~~(1) as Buyer's sole remedy, extend the time for performance up to 15 days and the closing will be extended as necessary.~~

~~C. Except as provided in Paragraph 15B, If Seller fails to comply with this contract, Seller is in default and Buyer may:~~

- ~~(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7.B(1), as liquidated damages and as Buyer's sole remedy.~~  
~~(2) enforce specific performance, or seek such other relief as may be provided by law, or both.~~

## 16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 3 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7.B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
- (1) Seller and the sales price will be reduced by the same amount; or
  - (2) Buyer and the sales price will not be reduced.

## 17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

## 18. ESCROW:



- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
- B. If one party makes written demand for the earnest money, Escrow Agent will give notice of the demand by providing to the other party a copy of the demand. If Escrow Agent does not receive written objection to the demand from the other party within 15 days after the date Escrow Agent sent the demand to the other party, Escrow Agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and Escrow Agent may pay the same to the creditors.
- C. Seller will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will retain the independent consideration for Seller.
- D. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested, in order to be effective, and shall be deemed effective on the third US Postal Service business day after the date of deposit with US Postal Service, postage prepaid. Notices to escrow agent are effective upon receipt by escrow agent.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to escrow agent within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

**19. MATERIAL FACTS:** ~~To the best of Seller's knowledge and belief: (Check only one box.)~~

- ☐ ~~A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.~~
- ☐ ~~B. Except as otherwise provided in this contract, Seller is not aware of:~~
  - ~~(1) any subsurface structures, pits, waste, springs, or improvements;~~
  - ~~(2) any pending or threatened litigation, condemnation, or assessment affecting the Property;~~
  - ~~(3) any environmental hazards or conditions that materially affect the Property;~~
  - ~~(4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;~~
  - ~~(5) whether radon, asbestos-containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;~~
  - ~~(6) any wetlands, as defined by federal or state law or regulation, on the Property;~~
  - ~~(7) any threatened or endangered species or their habitat on the Property;~~
  - ~~(8) any present or past infestation of wood-destroying insects in the Property's improvements;~~
  - ~~(9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;~~
  - ~~(10) any condition on the Property that violates any law or ordinance.~~

~~(Describe any exceptions to (9)-(10) in Paragraph 12 or an addendum.)~~

**20. NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties' addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- ☐ ~~A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.~~
- ☐ ~~B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.~~

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.

B. This contract contains the entire agreement of the parties and may not be changed except in writing.

C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: *(Check all that apply.)*

- ☒ (1) Property Description Exhibit identified in Paragraph 2;
- ☐ (2) Commercial Contract Financing Addendum (TAR-1931);
- ☐ (3) Commercial Property Condition Statement (TAR-1408);
- ☐ (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
- ☐ (5) Notice to Purchaser of Real Property in a Water District (MUD);
- ☐ (6) Addendum for Coastal Area Property (TAR-1915);
- ☐ (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
- ☐ (8) Information About Brokerage Services; and

☒ (9) Exhibit B: Form of Deed; Exhibit C: Special Provisions Addendum.

*(Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)*

E. Buyer ☐ may ☒ may not assign this contract except with Seller's prior written consent, in Seller's sole discretion. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

**23. TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**24. EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receives this contract after all parties execute this contract.

**25. ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to

purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. ~~Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on \_\_\_\_\_, 201\_\_, the offer will lapse and become null and void.~~

*[Remainder of this page intentionally left blank; signature page follows.]*

**READ THIS CONTRACT CAREFULLY. The Seller and its agents and representatives make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.**

Seller:

Metropolitan Transit Authority of  
Harris County, Texas

Buyer:

\_\_\_\_\_,  
\_\_\_\_\_

By (signature): \_\_\_\_\_

Printed Name: Thomas C. Lambert

Title: President and CEO

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

By (signature): \_\_\_\_\_

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

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

#### ATTORNEYS

Seller's attorney is: Metropolitan Transit  
Authority General Counsel

Address: 1900 Main St., 14<sup>th</sup> Floor

Houston, Texas 77002

Attn: Cydonii Fairfax

Buyer's attorney is: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone & Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Phone & Fax: (p) 713-652-8053 (f) 713-739-4699

E-mail: Cydonii.Fairfax@ridemetro.org

Seller's attorney requests copies of documents,  
notices, and other information:

☒ the title company sends to Seller.

☒ Buyer sends to Seller.

Buyer's attorney requests copies of documents,  
notices, and other information:

☒ the title company sends to Buyer.

☒ Seller sends to Buyer.

:

#### ESCROW RECEIPT

Escrow Agent acknowledges receipt of:

☐ A. the Contract on \_\_\_\_\_, 2018 ("**Effective Date**");

☐ B. earnest money in the amount of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ on \_\_\_\_\_, 2018.

Escrow Agent:

CHARTER TITLE COMPANY

Address: 1717 W. Loop South, Ste. 1200

Houston, TX 77027

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

Printed Name: Susan Simmons

Assigned file number (GF#): \_\_\_\_\_

Phone / Fax: 713-871-9700

E-mail: ssimmons@chartertitle.com

**EXHIBIT A**

4,305 square feet of land being Lot 22, Block 31, Lindale Park Subdivision, Section No. 5 in the John Austin Survey, Abstract No. 1, Houston, Harris County, Texas.

## Form of Deed

## SPECIAL WARRANTY DEED

THIS CONVEYANCE IS MADE ON AN "AS IS" CONDITION AND BASIS, "WITH ALL FAULTS." GRANTEE ACKNOWLEDGES AND AGREES THAT (i) EXCEPT FOR THE WARRANTY OF TITLE CONTAINED HEREIN, GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE SUBJECT PROPERTY, ITS NATURE, CONDITION, QUALITY, VALUE, MERCHANTABILITY, SUITABILITY FOR A PARTICULAR PURPOSE, COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, CODES OR ORDINANCES OR ANY OTHER ASPECT OR MATTER; (ii) GRANTEE HAS HAD AMPLE AND ADEQUATE OPPORTUNITY TO THOROUGHLY INVESTIGATE THE SUBJECT PROPERTY, AND GRANTEE IS PURCHASING THE SUBJECT PROPERTY IN RELIANCE SOLELY ON THE BASIS OF ITS OWN INVESTIGATIONS AND ASSESSMENTS OF THE SUBJECT PROPERTY PERFORMED BY OR ON BEHALF OF GRANTEE; (iii) GRANTEE EXPRESSLY DISCLAIMS ANY RELIANCE UPON ANY STATEMENTS, DOCUMENTATION OR OTHER INFORMATION THAT COULD BE OR ACTUALLY IS PROVIDED BY OR ON BEHALF OF GRANTOR OR GRANTOR'S FAILURE TO DISCLOSE ANY SUCH STATEMENTS, DOCUMENTATION OR OTHER INFORMATION; (iv) GRANTEE HEREBY EXPRESSLY ASSUMES ALL RISKS RELATING TO THE SUBJECT PROPERTY, INCLUDING BUT NOT LIMITED TO ITS NATURE, CONDITION,

QUALITY, VALUE, MERCHANTABILITY, SUITABILITY FOR A PARTICULAR PURPOSE, COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, CODES OR ORDINANCES OR ANY OTHER ASPECT OR MATTER; (v) GRANTEE INDEMNIFIES, DEFENDS AND HOLDS HARMLESS GRANTOR FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION AND SUITS OR PROCEEDINGS BY BUYER OR ANY THIRD PARTY ARISING OUT OF THE SUBJECT PROPERTY; AND (vi) THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE SUBJECT PROPERTY IS SOLD BY GRANTOR AND PURCHASED BY GRANTEE SUBJECT TO THE FOREGOING.

This conveyance is further expressly made and accepted subject to any and all restrictions, reservations, covenants, conditions, rights of way, easements and other matters of record in the Official Public Records of Real Property of Harris County, Texas, or which would be evident from a physical inspection or a survey, relating to the Subject Property, if any, save and except any liens or leases, but only to the extent they are still in effect as of the effective date of this Deed; and to all laws, regulations, codes and ordinances at any time applicable to Grantee or the Subject Property (the "**Permitted Exceptions**").

TO HAVE AND TO HOLD the Subject Property, together with all and singular all rights, hereditaments and appurtenances thereto, unto Grantee and Grantee's successors and assigns forever, subject to the matters set forth herein; and Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns to WARRANT AND FOREVER DEFEND the Subject Property unto Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise, subject to the matters set forth herein.

EXECUTED on the date set forth in the acknowledgment below; to be effective, however, for all purposes as of \_\_\_\_\_, 2018.

**GRANTOR:**

METROPOLITAN TRANSIT AUTHORITY OF HARRIS  
COUNTY, TEXAS  
a public body corporate and politic organized and  
existing under Chapter 451, Texas Transportation Code

By: \_\_\_\_\_  
Name: Thomas C. Lambert  
Title: President & CEO

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by Thomas C. Lambert, President and Chief Executive Officer of Metropolitan Transit Authority of Harris County, Texas, a public body corporate and politic organized and existing under Chapter 451, Texas Transportation Code, on behalf of said Authority.

(SEAL)

\_\_\_\_\_  
Notary Public in and for Texas

**Grantee's address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**After recording, return to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_



**EXHIBIT A**

LEGAL DESCRIPTION OF PROPERTY

4,305 square feet of land being Lot 22, Block 31, Lindale Park Subdivision, Section No. 5 in the John Austin Survey, Abstract No. 1, Houston, Harris County, Texas

## EXHIBIT C

### Special Provisions Addendum

This **SPECIAL PROVISIONS ADDENDUM** (this "Addendum"), is attached to and incorporated therein by reference to that certain Commercial Contract-Unimproved Property Contract of even date herewith (the "Contract"), by and between **METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS** ("Seller"), and \_\_\_\_\_ ("Buyer"). Reference is hereby made to the Contract; all terms defined in the Contract and used but not otherwise defined herein shall have the meanings ascribed to them in the Contract. The following modifications and supplemental provisions are hereby incorporated into the Contract as if set forth therein verbatim:

**1. THE FOLLOWING PROVISIONS ARE INSERTED AS THE LAST SENTENCE OF PARAGRAPH 7.A.:**

**"THE SALE OF THE PROPERTY IS MADE ON AN "AS IS" CONDITION AND BASIS, "WITH ALL FAULTS." BUYER ACKNOWLEDGES AND AGREES THAT (i) EXCEPT FOR THE WARRANTY OF TITLE TO BE CONTAINED IN THE DEED, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY, ITS NATURE, CONDITION, QUALITY, VALUE, MERCHANTABILITY, SUITABILITY FOR A PARTICULAR PURPOSE, COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, CODES OR ORDINANCES OR ANY OTHER ASPECT OR MATTER; (ii) BUYER HAS AND WILL HAVE AMPLE AND ADEQUATE OPPORTUNITY UNDER THE TERMS OF THIS CONTRACT TO THOROUGHLY INVESTIGATE THE PROPERTY, AND BUYER IS PURCHASING THE PROPERTY IN RELIANCE SOLELY ON THE BASIS OF ITS OWN INVESTIGATIONS AND ASSESSMENTS OF THE PROPERTY PERFORMED BY OR ON BEHALF OF BUYER; (iii) BUYER EXPRESSLY DISCLAIMS ANY RELIANCE UPON ANY STATEMENTS, DOCUMENTATION OR OTHER INFORMATION THAT COULD BE OR ACTUALLY IS PROVIDED BY OR ON BEHALF OF SELLER OR SELLER'S FAILURE TO DISCLOSE ANY SUCH STATEMENTS, DOCUMENTATION OR OTHER INFORMATION; (iv) BUYER ASSUMES ALL RISKS RELATING TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO ITS NATURE, CONDITION, QUALITY, VALUE, MERCHANTABILITY, SUITABILITY FOR A PARTICULAR PURPOSE, COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, CODES OR ORDINANCES OR ANY OTHER ASPECT OR MATTER; (v) BUYER INDEMNIFIES, DEFENDS AND HOLDS HARMLESS THE SELLER FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION AND SUITS OR PROCEEDINGS BY BUYER OR ANY THIRD PARTY ARISING OUT OF THE PROPERTY AND/OR THIS CONTRACT; AND (vi) THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY BUYER SUBJECT TO THE FOREGOING. THIS DISCLAIMER SHALL BE INCORPORATED INTO THE DEED AT CLOSING."**

**2. WAIVER OF DTPA.** BUYER HEREBY WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ. OF THE TEXAS BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF BUYER'S OWN SELECTION, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.

**3.** The contract including this **Exhibit C – Special Provisions Addendum** may be executed in multiple originals and/or counterparts, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same instrument. Telecopy signatures, electronic signatures, and copies thereof (whether delivered by facsimile, email or otherwise) shall be considered original signatures for all purposes, including without limitation the execution and enforcement of the contract and any amendment thereto.

**4.** Telecopy signatures, electronic signatures, and copies thereof (whether delivered by facsimile, email or otherwise) shall be considered original signatures for all purposes, including without limitation the execution and enforcement of the contract and any amendment thereto.