

**COMMISSIONERS' COURT ADJOURNED TO EXECUTIVE SESSION AT 1:19 P.M. ON TUESDAY, JANUARY 29, 2002.**

**AGENDA ITEM 41**

Discuss real estate (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.072 pertaining to real property.)

No action was taken in Executive Session.

**AGENDA ITEM 42**

Discuss pending litigation: Carol Collins VS. Williamson County and Eugene Taylor (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.074 pertaining to personnel.)

No action was taken in Executive Session.

**COMMISSIONERS' COURT RECONVENED FROM EXECUTIVE SESSION AT 1:32 P.M. ON TUESDAY, JANUARY 29, 2002.**

**AGENDA ITEM 43**

Discuss and take appropriate action on real estate.

Moved: **Judge Doerfler**

Seconded: **Commissioner Boatright**

Motion: To authorize the County Judge to sign a purchase agreement on the Hewlett lot.

Vote: **5 - 0**

Moved: **Commissioner Limmer**

Seconded: **Commissioner Hays**

Motion: To authorize the County Judge to sign a contract on two lots for the JP #4 office.

Vote: **5 - 0**

< Attachment >



# COPY

## TEXAS ASSOCIATION OF REALTORS® IMPROVED PROPERTY COMMERCIAL CONTRACT

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1. **PARTIES:** Hewlett Holdings, Inc. (Seller) agrees to sell and convey to Williamson County of the State of Texas (Buyer) and Buyer agrees to buy from Seller the Property described below.

2. **PROPERTY:**

A. The property sold by this contract is called the "Property." The Property is that real property situated in Williamson County, Texas at 911 S. Main Street (address) that is legally described as follows: (Identify exhibit if described by attachment.)

Lots 1 - 8, Block 1, Glasscock Addition, City of Georgetown and as further identified in Exhibit "B" attached.

B. The Property is sold together with:

- (1) all buildings, improvements, and fixtures;
- (2) 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;
- (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (4) Seller's interest in all licenses and permits related to the Property;
- (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- (7) the following personal property: \_\_\_\_\_

(Describe any exceptions, reservations, or restrictions in Paragraph 11 or an addendum.)  
(If the Property is a condominium, attach condominium addendum.)

3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property:

A. Cash portion payable by Buyer at closing	\$ <u>725,000.00</u>
B. Sum of all financing described in Paragraph 4	\$ _____
C. Sales price (sum of A and B)	\$ <u>725,000.00</u>

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3B as follows: (Check all that apply.)

- ☐ A. Third Party Financing: A third party note(s) 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 Financing Addendum.
- ☐ B. Assumption: In accordance with the attached Financing Addendum, Buyer will assume the unpaid principal balance of the first lien promissory note, 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 Financing Addendum in the amount of \$ \_\_\_\_\_ .

(TAR-1801) 11-5-99

Initialed for Identification by Buyer Jed and Seller \_\_\_\_\_

Brashear Properties, Ltd 2955 Dawn Drive, #B, Georgetown TX 78628

Phone: 512-930-5796

Fax:

Brashear Properties

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5. **EARNEST MONEY:** Not later than 3 days after the effective date, Buyer must deposit \$ 10,000.00 as earnest money with Alamo Title Company (escrow agent) at 3305 Northland Drive, #100, Austin, Texas (escrow agent's address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money. 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, SURVEY, AND UCC SEARCH:**

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Alamo Title Company (the 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) those title exceptions permitted by this contract or as may be approved by Buyer in writing; 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 area boundaries: (Check (a) or (b) only.)
- ☒ (a) will not be deleted from the title policy.
- ☐ (b) will be deleted from the title policy at the expense of ☐ Buyer ☐ Seller.
- (3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6D.
- (4) Within 21 days after the effective date, Seller will furnish 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:

- (1) Within 45 days after the effective date: (Check all that apply.)
- ☐ (a) Buyer will obtain a survey of the Property at Buyer's expense.
- ☒ (b) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date.
- ☐ (c) Seller will deliver a true and correct copy of Seller's existing survey of the Property dated \_\_\_\_\_, Seller, at Seller's expense:
- ☐ (i) will have the existing survey recertified on a date not earlier than \_\_\_\_\_.
- ☐ (ii) will not have the existing survey recertified.
- (2) The survey required under Paragraph 6B(1) must be made by a Registered Professional Land Surveyor acceptable to the title company. The survey must:
- (a) identify the Property by metes and bounds or platted lot description;
- (b) show that the survey was made and staked on the ground with corners permanently marked;
- (c) set forth the dimensions and total area of the Property;
- (d) show the location of all improvements, highways, streets, roads, railroads, rivers, creeks or other waterways, fences, easements, and rights-of-way on the Property with all easements and rights-of-way referenced to their recording information;
- (e) show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property lying within the 100-year flood plain as shown on the current Federal Emergency Management Agency map; and
- (f) contain the surveyor's certificate that the survey is true and correct.

C. UCC Search:

- ☒ (1) Within 14 days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.

Initialed for Identification by Buyer JS, \_\_\_\_\_ and Seller \_\_\_\_\_

Commercial Improved Contract Concerning 911 S. Main Street, Georgetown, TX 78628☐ (2) Buyer does not require Seller to furnish a UCC search.D. Buyer's Objections to the Commitment, Survey, and UCC Search:

- (1) Within 15 days after Buyer receives all of the items required in Paragraphs 6A, 6B, and 6C (the commitment, copies of the documents evidencing title exceptions, survey, and UCC search), Buyer may object to matters disclosed in the items if:
- (a) the matters disclosed constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 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 100-year flood plain.
- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 20 days after Seller receives the objections. ~~The closing date will be extended as necessary 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 the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

3(8) of the Addendum

7. PROPERTY CONDITION: (Check A or B only.)

Environment study - Gas tanks?

☒ A. Present Condition: (Check (1) or (2) only.)

- ☒ (1) Buyer accepts the Property in its present "as-is" condition, subject to the requirements of Exhibit "A".
- ☐ (2) Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: Warranties - No known tanks on oil require cause. etc.

☐ B. Feasibility Period and Right to Terminate:

- (1) Delivery of Property Information: Within \_\_\_\_\_ days after the effective date, Seller will deliver to Buyer the following items to the extent that the items are in Seller's possession or are readily available to Seller. Any item not delivered is deemed not to be in Seller's possession or readily available to Seller. The items Seller will deliver are:
- (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
  - (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
  - (c) a current inventory of all tangible personal property owned by Seller that is located on, attached to, and used in connection with the Property's operations;
  - (d) 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;
  - (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
  - (f) copies of all current warranties and guaranties relating to all or part of the Property;
  - (g) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
  - (h) copies of all leasing or commission agreements that currently relate to all or part of the Property;
  - (i) a copy of the "as-built" plans and specifications of the Property;
  - (j) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
  - (k) a copy of Seller's income and expense statement for the Property from \_\_\_\_\_ to \_\_\_\_\_;
  - (l) copies of all previous environmental assessments, studies, or analyses made on or relating to the Property;
  - (m) real and personal property tax statements for the Property for the previous 2 calendar years; and
  - (n) Survey

(2) Inspections, Studies, or Assessments:

- (a) Within \_\_\_\_\_ days after the effective date, Buyer, at Buyer's expense, may complete or cause to be completed inspections, studies, or assessments of the Property, including all improvements and fixtures. Inspections, studies, or assessments may include, but are not limited to:

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- (i) physical property inspections (for example, structural pest control, mechanical, structural, electrical, and plumbing inspections);
- (ii) economic feasibility studies;
- (iii) environmental assessments (for example, soil tests, air sampling, and paint sampling);
- (iv) engineering studies; and
- (v) compliance inspections (for example, compliance determination with zoning ordinances, restrictions, building codes, and statutes).

(b) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(c) In connection with Buyer's inspections, studies, and assessments, Buyer must:

- (i) employ only trained and qualified inspectors and assessors;
- (ii) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (iii) abide by any reasonable entry rules or requirements that Seller may require;
- (iv) not interfere with existing operations or occupants of the Property; and
- (v) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(d) 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.

→ (3) Right to Terminate: Buyer may terminate this contract for any reason within        days after the effective date by providing Seller with written notice of termination. If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer less \$        that Seller will retain as independent consideration for Buyer's right to terminate under this paragraph. The independent consideration is to be credited to the sales price only upon the closing of the sale. Buyer has tendered the independent consideration to Seller upon payment of the full amount specified in Paragraph 5 to the escrow agent. If Buyer does not terminate within the time required, Buyer accepts the Property in its present condition.

(4) 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 7B(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 (excluding economic feasibility studies) related to the Property that Buyer completed or caused to be completed. This Paragraph 7B(4) survives termination.

(5) Contracts Affecting Operations: After Buyer's right to terminate under Paragraph 7B(3) expires, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's prior written approval.

## 8. BROKERS:

A. The brokers to this sale are:

Ercel Brashear

Listing Broker 0229867 License No.

Listing Broker:

☒ represents Seller.

☐ acts as an intermediary between Seller and Buyer.

n/a

Other Broker

License No.

Other Broker represents Buyer.

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

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

☒ (2) At closing, Seller will pay:

Listing Broker a total cash fee of:

☒ 6,000 % of the sales price.

☐

Other Broker a total cash fee of:

☐ % of the sales price.

☐

The cash fees will be paid in Williamson County, Texas. Seller authorizes escrow agent to pay the brokers from Sellers proceeds at closing.

Initialed for Identification by Buyer Jed, and Seller \_\_\_\_\_

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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 8 without the written consent of the brokers affected by the amendment.

9. CLOSING:

- A. The closing of the sale will be on or before See Addendum or within 7 days after objections to title have been cured, whichever date is later (the closing date). If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- B. At closing, Seller will deliver, at Seller's expense, a ☐ general ☒ special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property at closing:
- (1) with no liens, assessments, or Uniform Commercial Code 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.
- C. At closing, Seller, at Seller's expense, will also deliver:
- (1) tax statements showing no delinquent taxes on the Property;
  - (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
  - (3) an assignment of all leases to or on the Property;
  - (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
    - (a) licenses and permits;
    - (b) maintenance, management, and other contracts; and
    - (c) warranties and guaranties;
  - (5) a rent roll current on the day of the closing certified by Seller as true and correct;
  - (6) evidence that the person executing this contract is legally capable and authorized to bind Seller; and
  - (7) any notices, statements, certificates, or other documents required by this contract or law necessary to convey the Property, all of which must be completed and executed by Seller as necessary.
- D. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the escrow agent;
  - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
  - (3) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- E. ~~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.~~

10. POSSESSION: Seller will deliver possession of the Property to Buyer on closing in its present or required repaired condition, ordinary wear and tear excepted. Until closing, Seller will operate the Property in the same manner as on the effective date and will not transfer or dispose of any of the personal property described in Paragraph 2B or sold under this contract. 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.

11. SPECIAL PROVISIONS: (Identify exhibit if special provisions are contained in an attachment.)

A. Exhibit "A" - Seller's Addendum - is attached hereto and made a part of this contract.

B. Taking Under Power of Eminent Domain. Seller and Purchaser acknowledge that Purchaser is acquiring the Property under the threat of Eminent Domain and Seller has entered into this contract in lieu of Purchaser's proceeding under its power of Eminent Domain to acquire the Property pursuant to the laws and Constitution of the United States.

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(Continue Special Provisions.)

**12. SALES EXPENSES:****A. Seller's Expenses:** Seller will pay for the following in cash 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 and any bill of sale;
- (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 in cash at or before closing:

- (1) all loan fees or expenses (for example, application fees, origination fees, discount fees, appraisal fees, assumption fees, recording fees, tax service fees, mortgagee title policy expenses, credit report fees, document preparation fees, interest expense that Buyer's lender requires Buyer to pay at closing, and other fees required by Buyer's lender);
- (2) preparation fees of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee;
- (6) copy and delivery fees for delivery of the title commitment and related documents; and
- (7) other expenses that Buyer will pay under other provisions of this contract.

**13. PRORATIONS, ROLLBACK TAXES, ESTOPPEL CERTIFICATES, RENT, AND DEPOSITS:****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 13A(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.

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Initialed for Identification by Buyer [Signature] and Seller           

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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 Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 13B survives closing.

C. Estoppel Certificates:

(1) 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.

(2) The estoppel certificates must state:

- (a) that no default exists under the lease by the landlord or tenant as of the date the estoppel certificate is signed;
- (b) the amount of the scheduled rents to be paid through the end of the lease and any rental payments that have been paid in advance;
- (c) the amount of any security deposit;
- (d) the amount of any offsets tenant is entitled against rent;
- (e) the expiration date of the lease;
- (f) a description of any renewal options; and
- (g) \_\_\_\_\_

*aff. no interest of any other party*

D. 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 13D survives closing.

14. CASUALTY LOSS AND CONDEMNATION:

A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, ~~Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:~~ *Land*

- (1) terminate this contract and the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), will be refunded to Buyer;
- (2) extend the time for performance up to 15 days and the closing date will be extended as necessary; or
- (3) accept the Property in its damaged condition and accept an assignment of any insurance proceeds Seller is entitled to receive.

B. If before closing, condemnation proceedings are commenced against *the other* any part of the Property, Buyer *or Seller* may:

- (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), will be refunded to Buyer; or
- (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to:
  - (a) Seller and the sales price will be reduced by the same amount; or
  - (b) Buyer and the sales price will not be reduced.

15. DEFAULT:

A. If Buyer fails to comply with this contract, Buyer is in default and Seller may: *as Seller's sole remedy*

- (1) ~~enforce specific performance, or seek other relief as may be provided by law, or both; or~~
- (2) terminate this contract and receive the earnest money as liquidated damages, thereby releasing the parties from this contract.

B. If, without fault, Seller is unable within the time allowed to deliver the *Survey* ~~estoppel certificates~~ or the commitment, *as Buyer's sole remedy, either* Buyer may:

- (1) terminate this contract and receive the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), as the sole remedy; or
- (2) 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) enforce specific performance, ~~or seek such other relief as may be provided by law, or both; or~~
- (2) terminate this contract and receive the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), as liquidated damages, thereby releasing the parties from this contract.

16. 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 16 survives closing.

✓



Commercial Improved Contract Concerning 911 S. Main Street, Georgetown, TX 78628**17. ESCROW:**

- A. At closing, the earnest money must be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.
- B. If both parties make written demand for the earnest money, 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.
- C. 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 30 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.
- D. Escrow agent will deduct the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- E. If escrow agent complies with this Paragraph 17, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.
- F. Notices under this Paragraph 17 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.

**18. MATERIAL FACTS:**

A. To the best of Seller's knowledge and belief: (Check (1) or (2) only.)

- ☒ (1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.
- ☐ (2) Seller is not aware of any of the following, except as described otherwise in this contract:
- (a) any material physical defects to the Property;
  - (b) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (c) any environmental hazards or conditions that affect the Property;
  - (d) 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;
  - (e) whether 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;
  - (f) whether wetlands, as defined by federal or state law or regulation, are on the Property; and
  - (g) whether threatened or endangered species or their habitat are on the Property.

(Describe any exceptions to (a) - (g) in Paragraph 11 or an addendum.)

B. Each written lease Seller is to furnish to Buyer under this contract must be in full force and effect according to its terms without amendment or modification that is not disclosed to Buyer in writing. Seller must disclose, in writing, to Buyer if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any modifications, amendments, or default by landlord or tenant under the leases;
- (2) any failure by Seller to comply with Seller's obligations under the leases;
- (3) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (4) any non-occupancy of the leased premises by a tenant;
- (5) any advance sums paid by a tenant under any lease;
- (6) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (7) 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.

19. 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:

Buyer at 710 Main Street, Georgetown,  
TX 78626

Phone (512)-943-1550  
Fax (512)-943-1662

Seller at PO Box 799, Georgetown, TX 78627

Phone (512)-681-3017  
Fax (512)-930-5888

(TAR-1801) 11-5-99

Initialed for Identification by Buyer [Signature] and Seller

Commercial Improved Contract Concerning 911 S. Main Street, Georgetown, TX 78628

20. **FEDERAL TAX REQUIREMENT:** If Seller is a "foreign person" as defined by applicable law, or if Seller fails to deliver at closing an affidavit that Seller is not a foreign person, then Buyer will withhold from the sales proceeds at closing an amount sufficient to comply with applicable tax law and deliver the amount withheld to the Internal Revenue Service (IRS), together with appropriate tax forms. IRS regulations require filing written reports if cash in excess of specified amounts is received in the transaction.
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.
22. **AGREEMENT OF THE PARTIES:**
- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns.
  - B. This contract is to be construed in accordance with the laws of the State of Texas.
  - C. This contract contains the entire agreement of the parties and may not be changed except by written agreement.
  - D. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
  - E. Buyer ☐ may ☒ may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.
  - F. Addenda which are part of this contract are: *(Check all that apply.)*
    - ☒ (1) Property Description Exhibit identified in Paragraph 2;
    - ☐ (2) Condominium Addendum;
    - ☐ (3) Financing Addendum;
    - ☐ (4) Commercial Property Condition Statement;
    - ☐ (5) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards;
    - ☐ (6) Notice to Purchaser of Real Property in a Water District;
    - ☐ (7) Addendum for Coastal Area Property;
    - ☐ (8) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway; and
    - ☒ (9) Seller's Addendum
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 receipts 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. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.
  - D. 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.
  - E. 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.

Commercial Improved Contract Concerning 911 S. Main Street, Georgetown, TX 78628

- F. If any apartments or other residential units are part of the Property and those units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.
- 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. Selection of experts, 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 by 5:00 p.m., in the time zone in which the Property is located, on \_\_\_\_\_, the offer will lapse and become null and void.

This is a legally binding contract. READ IT CAREFULLY. The brokers and agents 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.

Buyer's  
Attorney \_\_\_\_\_

Seller's  
Attorney \_\_\_\_\_

John C. Daehler 1-29-02  
Buyer  
Williamson County of the State of Texas

Seller  
Hewlett Holdings, Inc.

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

**AGREEMENT BETWEEN BROKERS**

Listing Broker agrees to pay \_\_\_\_\_ n/a (Other Broker)  
a fee of \$ \_\_\_\_\_ or \_\_\_\_\_ % of the sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

n/a  
Other Broker

Ercel Brashear  
Listing Broker  
0229867  
License No.

License No. \_\_\_\_\_

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

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

Other Broker's Address \_\_\_\_\_

Listing Broker's Address \_\_\_\_\_

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

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

**ESCROW RECEIPT**

Escrow agent acknowledges receipt of:

- ☐ A. the contract on this day \_\_\_\_\_ (effective date);
- ☐ B. earnest money in the amount of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ on this day

Escrow Agent  
By: \_\_\_\_\_

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

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

## EXHIBIT "A"

ADDENDUM TO THE CONTRACT FOR THE SALE OF  
911 S. MAIN STREET, GEORGETOWN, TEXAS

In addition to the provisions of the contract, Seller and Buyer agree the following conditions shall apply to this transaction:

1. "AS IS, WHERE IS":

GENERAL. BUYER HEREBY EXPRESSLY ACKNOWLEDGES THAT IT HAS OR WILL HAVE, PRIOR TO THE END OF THE INSPECTION PERIOD (HEREINAFTER DEFINED), THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY THE BUYER IN ORDER TO ENABLE THE BUYER TO EVALUATE THE PURCHASE OF THE PROPERTY. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF LAND SUCH AS THE PROPERTY AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS, AND THAT BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME, AND, UPON CLOSING, SHALL ACQUIRE THE PROPERTY SUBJECT TO THE RISK OF ANY ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, THAT MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY AGENT OF SELLER EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT BUYER IS ACQUIRING THE PROPERTY ON AN AS IS, WHERE IS AND WITH ALL FAULTS BASIS, WITHOUT REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN. BUYER HEREBY ACQUIRES THE PROPERTY SUBJECT TO ALL RISK AND LIABILITY (AND AGREES THAT SELLER SHALL NOT BE LIABLE TO BUYER OR ITS PRINCIPALS, AGENTS, CONTRACTORS, EMPLOYEES, SUCCESSORS OR ASSIGNS FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATING TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR, OR OPERATION OF THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS ARTICLE 1 WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE PURCHASE PRICE OF THE PROPERTY.

EXCLUDED TERMS. NOTWITHSTANDING ANY SEEMING CONTRADICTION, IT IS AGREED AND UNDERSTOOD THAT THE PROVISIONS OF THIS ARTICLE ARE LIMITED SO AS TO NOT BE CONSTRUED AS DIMINISHING OR NEGATING ANY WARRANTY OF TITLE SET FORTH IN THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING.

INCORPORATION INTO DEED. IT IS AGREED AND UNDERSTOOD THAT THE TERMS AND PROVISIONS OF THIS ARTICLE SHALL EXPRESSLY SURVIVE THE CLOSING AND NOT MERGE THEREIN AND SHALL BE INCORPORATED INTO THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING.

2. **SELLER'S OBLIGATIONS:** Within five (5) days of the date of the contract and if in Seller's possession, Seller shall deliver to Buyer copies of all environmental reports on the property so long as such delivery does not violate the terms of such report. Buyer shall keep all such information confidential and will not disclose the nature or conclusion in such reports to any third party other than Buyer's consultants, contractors, employees and/or others directly associated with Buyer's effort to purchase the property, unless compelled. Seller may enforce the terms of this confidentiality provision by all legal and equitable remedies available. Seller has no personal property owned or leased by Seller and used in conjunction with the operation and maintenance of the property. Seller has no service, maintenance, management and other contracts in existence pertaining to the property.

3. **FEASIBILITY PERIOD.** Buyer shall have a period of thirty (30) days from the Effective Date of the contract (the "Feasibility Period"), for the right of investigation and inspection of the Property to determine whether or not, in Buyer's sole judgment, the property is suitable for Buyer's intended use.

A. **Access and Indemnity.** Buyer and Buyer's agents shall have the right of access to the Property during normal business hours throughout the Feasibility Period upon reasonable notice to Seller for the purpose of conducting such investigation and inspection as deemed necessary by Buyer, including without limitation soils testing and/or environmental assessments. Buyer shall not cause or permit damage or injury to be done to the Property, and Buyer shall repair any damage or injury to the Property resulting from Buyer's investigation and inspection of the Property. Buyer shall indemnify and hold harmless Seller on account of any claims, causes of action, damages, costs and expenses (including attorney's fees) arising out of or relating to the acts of Buyer, its agents and employees under the provisions of this section. This indemnity shall survive the termination of this Contract.

B. **Termination by Buyer.** If, during the Feasibility Period, Buyer determines, in Buyer's sole judgment, that the property is not suitable for Buyer's intended use then Buyer shall, no later than the expiration of the Feasibility Period, give Seller and the Title Company written notification of Buyer's decision to terminate the contract and Buyer shall be entitled to the return of the earnest money, less the sum of one hundred dollars (\$100.00) that Seller will retain as independent consideration, and after Buyer's compliance with the last sentence hereof. If Buyer does not provide written notice to Seller of Buyer's acceptance or rejection of the Property by the expiration of the Feasibility Period, then it shall be conclusively deemed that the Property is not suitable for Buyer's intended use, and the contract shall be terminated. If, for any reason, Buyer terminates the contract or fails to close this transaction, Buyer shall deliver to Seller all written soil, utility, environmental and feasibility reports prepared by or for Buyer related to the Property which are in possession or in control of Buyer, prior to the release of the earnest money by the Escrow Agent.

4. **CLOSING:** The closing of the sale of the property shall occur in the offices of the Title Company and shall be on or before thirty (30) days after the termination of the Feasibility Period.

5. **CONFLICTS:** In the event of a conflict between the provisions of this Seller's Addendum and the provisions of the contract to which this Addendum is attached, the provisions of this Addendum shall prevail.

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*Seller and Buyer acknowledge this Addendum to the Earnest Money Contract has been prepared as an aid in establishing the business details of the transaction as desired by the principals. It is the intent of the principals that this Addendum serves to conform the language of the promulgated contract to the terms of the agreement between the parties. Each party acknowledges that the Real Estate Broker has advised the principals to consult an attorney of their choice before executing this Addendum to the Earnest Money Contract.*

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**BUYER:** Williamson County of  
the State of Texas

**SELLER:** Hewlett Holdings, Ltd.

**By:** Hewlett Group, Inc., a Texas  
Corporation, its General Partner

By:

John C. Doerfler  
John Doerfler, County Judge

By:

Lan L. Hewlett, III, President

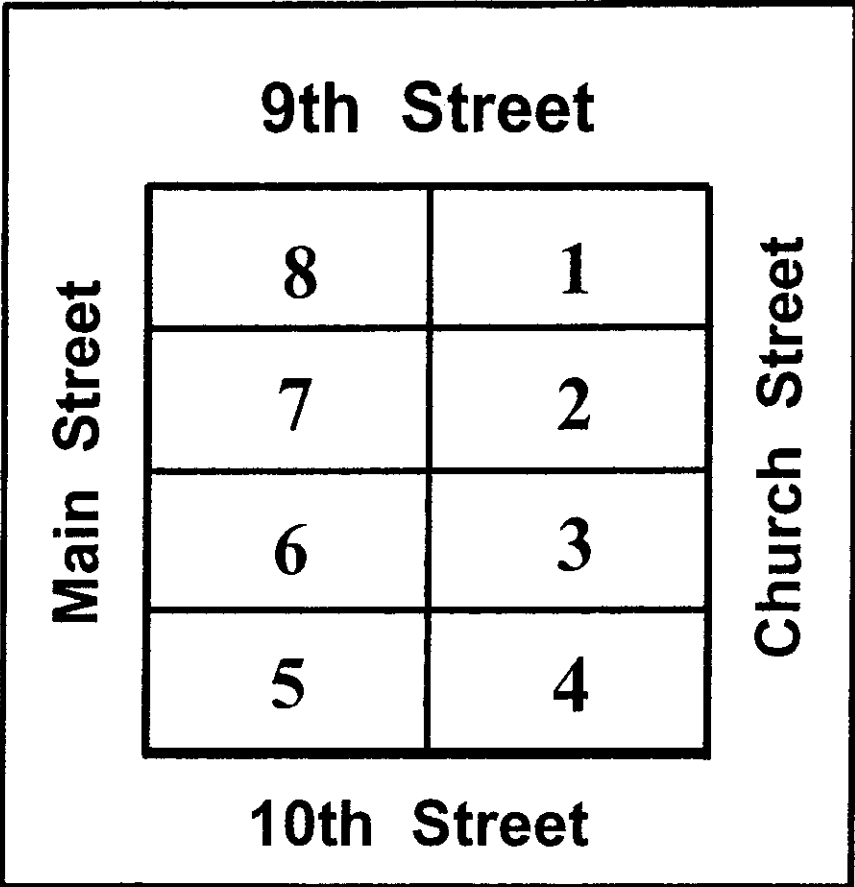
Date:

1-29-02

Date:

Exhibit "B"

Lots 1-8, Block 1, Glasscock Addition, City of Georgetown, Williamson County, Texas.



**EARNEST MONEY CONTRACT**

This Earnest Money Contract ("Contract") is entered into as of the Effective Date (as hereinafter defined) by and between SCI Texas Funeral Services, Inc., a Texas corporation ("Seller") and Williamson County, ("Buyer");

**WITNESSETH:**

For and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, 13,500 square feet of land, more or less, more particularly described in Exhibit A attached hereto and made a part hereof (which description shall be modified to conform to the description set forth on the Survey (provided for in Section 4(c) hereof), together with all of Seller's right, title and interest in and to any easements, rights-of-way or other interests in, on or to the described land together with all improvements located thereon, all and singular, and the rights and appurtenances pertaining thereto (the land and other property and rights which are described in this paragraph and which are being conveyed to Buyer pursuant to this Contract are herein together referred to as the "Property") free and clear of all liens, claims, encumbrances, easements, rights-of-way, reservations, restrictions, outstanding mineral interests and other matters affecting the Property or the title thereto except for the Permitted Exceptions (as defined in Section 6(a) hereof), for the price and upon and subject to the terms, provisions and conditions hereinafter set forth. Seller's conveyance to Buyer shall be by Special Warranty Deed and shall be subject to the use restrictions (the "Use Restrictions") described in Exhibit B attached hereto.

1. **CONTRACT SALE PRICE:** The sales price (the "Sales Price") for the Property is Forty thousand and No/100 Dollars, (\$40,000), all of which shall be due and payable to Seller in cash at Closing (as hereinafter defined).

2. **EARNEST MONEY:** Upon execution of this Contract by both parties, the Contract, together with Fifteen Hundred and No/100 Dollars (\$1,500) in the form of a certified or cashier's check or wire transfer (the "Earnest Money") shall be delivered to Longhorn Title Company (the "Title Company"). The effective date (the "Effective Date") of this Contract shall be the date when the Earnest Money and a fully executed copy of this Contract is delivered to the Title Company. Earnest Money shall be invested by the Title Company in an interest bearing account with an institution reasonably acceptable to both Buyer and Seller. Any interest earned on the account shall become additional Earnest Money. At Closing, the Earnest Money shall be applied to the Sales Price.

3. **CLOSING:** (a) The closing of the sale ("Closing") shall take place at the offices of the Title Company on a mutually agreeable date within fifteen (15) days following the expiration of the Due Diligence Period (as hereinafter defined), unless such date is extended by Buyer as necessary to allow additional time to obtain

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Governmental Approvals (as hereinafter provided for) but in no event later than 5:00 PM, April 12, 2002 (the actual date on which the closing occurs being herein referred to as the closing Date ("Closing Date")).

(b) **SELLER'S CLOSING RESPONSIBILITIES:** At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, as the case may be, the following:

- (i) A good and sufficient special warranty deed (the "Deed") granting and conveying to Buyer good and indefeasible title in fee simple to the Property subject only to the Permitted Exceptions as provided for in Section 6(a) of this Contract and the Use Restrictions set out in Exhibit B hereto;
- (ii) An Owner's Title Insurance Policy in favor of Buyer dated as of the Closing Date showing fee simple title to the Property to be vested in Buyer subject only to the Permitted Exceptions;
- (iii) Evidence of Seller's capacity and authority to close this Contract and the transactions provided for herein;
- (iv) A non-foreign person affidavit pursuant to Section 1445 of the Internal Revenue Code, as amended;
- (v) Payment of Seller's expenses as necessary to close this Contract;
- (vi) Other documents duly executed reasonably necessary to close this transaction;
- [(vii) 1031 Exchange documents as Seller shall elect;

(c) **BUYER'S CLOSING RESPONSIBILITIES:** At the Closing, Buyer shall deliver or cause to be delivered to Seller or the Title Company, as the case may be, the following:

- (i) Balance of the Sales Price;
- (ii) Evidence of Buyer's capacity and authority to close this Contract and the transaction provided for herein;
- (iii) Payment of Buyer's expenses as necessary to close this Contract;

- (iv) Other documents duly executed reasonably necessary to close this transaction;
- [(v) 1031 Exchange documents as Seller shall elect;

4. **CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS:** Each of the following are conditions precedent to Buyer's obligation to purchase the Property pursuant to this Contract:

(a) **DUE DILIGENCE:** Buyer shall have sixty (60) days from the Effective Date (the "Due Diligence Period") to perform any reasonable and customary nondestructive feasibility studies, inspections, tests and environmental assessments of the Property that Buyer deems appropriate (herein referred to as "Due Diligence"). If during the Due Diligence Period, Buyer finds any information or condition(s) concerning the Property (other than matters affecting the title to the Property or matters reflected in the Survey of the Property) which information or conditions(s) are objectionable to Buyer within Buyer's sole discretion or, if Buyer elects for any or no reason not to proceed with the purchase of the Property, Buyer may terminate this Contract by written notice to Seller delivered prior to the end of such Due Diligence Period.

(b) **TITLE COMMITMENT:** Seller shall, within twenty (20) calendar days after the Effective Date, obtain from the Title Company and deliver to Buyer, at Seller's cost, a commitment for title insurance in the amount of the Sales Price (the "Commitment") for a standard owner's policy to be issued by the Title Company together with copies of all recorded instruments affecting the Property shown as exceptions in the Commitment provided that Buyer shall pay and is responsible for any additional premiums or other costs additional to the premium for standard coverage if Buyer elects to obtain extended coverage and/or title endorsements to the Title policy.

(c) **SURVEY:** Buyer may, at Buyer's election, obtain within thirty (30) days following the Effective Date a current survey of the Property ("Survey") prepared by a surveyor ("Surveyor") licensed to do business in Texas, paid for by Buyer, which Survey shall be certified to Seller, Buyer and the Title Company and shall be sufficient to cause the Title Company to delete, at Buyer's cost and expense, the printed exception for "discrepancies, conflicts or shortages in area or boundary lines, or encroachments, or any overlapping of improvements" ("Survey Exception") in the Owner's Title Policy to be delivered to Buyer at the Closing.

5. **BUYERS OBLIGATIONS:** (a) **GOVERNMENTAL APPROVALS; CLOSING DATE EXTENSION:** Buyer hereby acknowledges and agrees that Buyer shall be solely responsible for obtaining any and all necessary governmental approvals including development and building permits, appearances, subdivisions, plats (and re-subdivisions and re-plats), zoning or rezoning, site plans, traffic, utility and drainage approvals required by any governmental authority having jurisdiction over the Property, to enable Buyer to purchase and develop the

Property (the "Governmental Approvals"). Buyer agrees to use Buyer's diligent, good faith efforts without delay to obtain all such approvals and in that connection. Seller, at no cost and expense to Seller, shall cooperate with Buyer and join with Buyer in the signing of any documents necessary to obtain such approvals. Seller shall have the right but not the obligation to join with Buyer as a co-applicant on any filings or documents made or executed as a part of obtaining the Governmental Approvals; provided, however, that in no event shall Seller be obligated, prior to Closing, to sign or deliver any such documents which bind Seller or the Property or create easements or dedications on final plats in respect to the Property. If Seller joins Buyer as a co-applicant to secure any Governmental Approval, Buyer shall indemnify and hold harmless Seller from all liability arising as a result of Seller being an applicant for such approvals including liability for costs or fees, costs of preparing plans or other items to be submitted and costs to carry out any requirements of any governmental agency made as a part of such approval process or arising as a result of any application or submittal. In the event all such Governmental Approvals are not obtained within the Due Diligence Period, Buyer may terminate this Contract within the Due Diligence Period as herein above provided, or the Closing Date will automatically be extended to a date that is within 15 days after the receipt of all such Governmental Approvals (but in no event later than April 12, 2002, as provided in Section 3(a) above).

(b) **BUYER'S DUE DILIGENCE OBLIGATIONS:** Buyer agrees to perform all Due Diligence concerning the Property within the Due Diligence Period. In this regard, Buyer or his designated agents may enter upon the Property with prior notice to Jim Snyder of Condra Funeral Home (Phone: 512-352-3636) for purposes of performing such Due Diligence. Within five (5) days of receipt, Buyer shall furnish Seller with copies of all reports, studies, analysis and development plans or requirements prepared by or for Buyer as a part of Buyer's Due Diligence. In the event the transaction described in this Contract shall not close, Buyer shall restore the Property to its prior condition, if changed as a result of Buyer's Due Diligence. All Due Diligence shall be at Buyer's sole cost and expense. Whether or not the transaction described in this Contract shall close, Buyer shall indemnify, defend and hold Seller harmless from and against all claims, actions, damages, liability, loss, costs, attorney's fees and expenses related to or arising from the Due Diligence performed by Buyer, or at Buyer's direction, even if such occurrence(s) were caused by the negligence of Seller to the extent, but no further, that Seller's negligence is based upon Seller's entry into this Contract, the grant of inspection and entry rights to Buyer or Seller's failure to monitor or supervise Buyer's, Buyer's agents', contractors', or employees' activities on the Property.

6. **OTHER AGREEMENTS:** (a) **TITLE INSURANCE COSTS; TITLE APPROVAL; SURVEY APPROVAL:** Seller shall be responsible for the cost of the Owner's Title Insurance Policy. All other costs will be shared equally as is customary in the State of Texas and as further described in Section 6(e). If Buyer has an objection to items disclosed in the Commitment or the Survey provided for herein, Buyer shall within fourteen (14) days after receipt of both the Commitment and the Survey (the "Objection Period") make written objections to Seller concerning matters shown on the Commitment or Survey. If Buyer makes objections, Seller

agrees to use reasonable efforts to cure such objections within thirty (30) days from the receipt thereof (the "Cure Period") with the understanding and agreement that Seller is not obligated either to incur costs in excess of Five Thousand and No/100 Dollars (\$5,000) or to institute litigation in pursuing any such efforts, but shall in all events be obligated to obtain the release of any liens against the Property voluntarily granted by Seller after the Effective Date. If the written objections are not cured or satisfied within the Cure Period, Buyer shall, as Buyer's sole and exclusive remedy, elect in writing delivered to Seller within ten (10) calendar days after the Cure Period either (a) to terminate this Contract and be entitled to the return of all deposits and interest thereon, or (b) to waive the unsatisfied objections and close the transaction with no reduction in the Sales Price. If Buyer fails to timely notify Seller in writing of any such objections during the Objection Period, it shall be deemed that Buyer has approved and found the Commitment, the Survey and all matters reflected on or in any of them to be acceptable and permitted hereunder and Buyer agrees to take title to the Property subject to such matters. Any items to which Buyer does not object in writing within the Objection Period or to which Buyer does object but subsequently waives (or is deemed to have waived) such objection shall be deemed to be a permitted exception(s) ("Permitted Exceptions").

(b) **PROPERTY CONDITION; AS IS, WHERE IS:** Buyer acknowledges and agrees that Buyer is experienced in the acquisition, development, ownership and operation of properties similar to the Property and that prior to the Closing, Buyer will have performed Due Diligence to Buyer's satisfaction. Buyer acknowledges and agrees that Buyer is relying on Buyer's (or Buyer's representatives') Due Diligence of the Property and not upon any statements (oral or written) which may have been made or may be made by Seller or any of Seller's representatives. As a material part of the consideration for this Contract, Buyer hereby agrees to accept the Property on the Closing Date in its "as is, where is" condition, with all faults, and without representation(s) and/or warranty(ies) by Seller of any kind, express or implied, or any arising by operation of law, except only the title warranties set forth in the Deed delivered by Seller to Buyer at the Closing.

(c) **BROKER'S FEE:** Buyer and Seller represent and warrant to each other that no real estate commissions, finders' fees or brokers' fees have been or will be incurred in connection with the sale of the Property by Seller to Buyer.

(d) **POSSESSION:** Possession of the Property (subject to the rights of parties claiming under the Permitted Exceptions) [and the lease] shall be delivered to Buyer at Closing.

(e) **SALE EXPENSES:** The following sale expenses shall be allocated between the parties, as follows:

(i) **SELLER'S EXPENSES:** All costs of releasing existing liens and recording the releases; Owner's Title Policy premiums; 1/2 of any Closing escrow fee; preparation of the Deed; transfer tax; and other expenses stipulated to be paid by Seller under other provisions of this Contract.

(ii) **BUYER'S EXPENSES:** All expenses incident to any loan, Mortgagee's Title Policy premiums; cost of the Survey if required by Buyer, 1/2 of any Closing escrow fee; Due Diligence costs and expenses; all expenses incurred in obtaining the Governmental Approvals; and other expenses stipulated to be paid by Buyer under other provisions of this Contract.

(f) **PRORATIONS:** All water and other utility charges, assessments, current standby fees, and sales, ad valorem and any other taxes, fuels, prepaid service contracts, expenses and charges and any rents and maintenance fees shall be prorated to the Closing Date, and such proration shall be final. The real estate taxes shall be prorated to the Closing Date on the basis of 100% of the most recent annual ad valorem taxes and such proration shall be final.

(g) **USE OF PROPERTY:** If after the Closing or during the term of this Contract, Buyer, or Seller on behalf of Buyer, changes the use of the Property and the same results in the assessment of additional taxes for the current or any past year, or this sale results in the assessment of additional taxes for the current or any past year, such additional taxes shall be the obligation of the Buyer.

(h) **CONDEMNATION:** If any substantial part (i.e. more than twenty percent 20%) of the land area of the Property is condemned prior to the Closing Date, or written notice of such condemnation is delivered to Seller prior to the Closing Date, Seller shall promptly give Buyer written notice of such condemnation. In the event of a condemnation, Buyer shall have the option either (i) to apply the proceeds of any condemnation award actually received by Seller prior to the Closing to reduce the Sales Price provided herein (or, in the event such proceeds have not been so received, to accept at the Closing an assignment of Seller's rights therein and consummate the sale without reduction in the Sales Price), or (ii) to declare this Contract terminated by delivering written notice of termination to Seller within ten (10) days after Buyer receives written notice of the condemnation. If Buyer elects to terminate this Contract, all awards and compensation arising out of said condemnation shall be the property of the Seller.

(i) **OTHER CONSIDERATION:** None

7. **TERMINATION; DEFAULT OR BREACH:** (a) **TERMINATION:** If this Contract is terminated for any reason during the Due Diligence Period and if Buyer is not then in breach hereof, the Earnest Money shall be returned to Buyer and neither party hereto shall have any other or further rights, duties or liabilities

under this Contract. If this Contract is terminated after the Due Diligence Period for any reason other than default or breach of this Contract by either party, and if Buyer is not then in breach hereof, the then undistributed portion of the Earnest Money shall be returned to Buyer and neither party hereto shall have any other or further rights, duties or obligations under this Contract.

(b) **DEFAULT OR BREACH:** If Buyer defaults under or breaches this Contract for any reason other than Seller's default or breach hereunder, Seller may, as Seller's sole and exclusive remedy, terminate this Contract and receive the undistributed balance of the Earnest Money as liquidated damages. If Seller defaults under or breaches this Contract for any reason other than Buyer's default or breach under this Contract, Buyer may, as Buyer's sole and exclusive remedies and provided Buyer is not in breach or default hereof, either (i) terminate this Contract and receive the undistributed portion of the Earnest Money, thereby releasing Seller from this Contract, or (ii) enforce specific performance of this Contract. Under no circumstances shall Seller be liable to Buyer under this Contract for damages specifically including consequential damages.

8. **REPRESENTATIONS AND WARRANTIES OF SELLER:** (a) Seller hereby represents and warrants to Buyer as follows, which representations and warranties shall be deemed made by Seller to Buyer also as of the Closing Date:

- (i) Seller is duly authorized and empowered to sell the Property.
- (ii) Seller has paid during Seller's ownership, all standby fees, taxes, charges, debts and other assessments due by Seller with respect to the Property;
- (iii) There will be no unrecorded liens or Uniform Commercial Code security interests against any of the Property which arose by the actions of Seller and which will not be satisfied out of the Sales Price;

(b) If any representation or warranty above is known by Buyer, prior to the Closing, to be untrue and is not remedied by Seller prior to the Closing, Buyer may, as Buyer's sole and exclusive remedy on account thereof, either (i) terminate this Contract, or (ii) waive Buyer's objections and close the transaction with no reduction in the Sales Price.

9. **MISCELLANEOUS:** (a) Any notice required or permitted to be delivered hereunder shall be deemed received when personally delivered or three (3) days following deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, or when delivered by a reputable overnight delivery service (such as Federal Express or Airborne), addressed to Seller or Buyer, as the case may be, at the address set forth below the signature of such party in this Contract.

(b) This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Harris County.

(c) This Contract shall be binding upon and inure to the benefit of the parties hereto and, subject to Section 10 hereof, their successors and assigns.

(d) In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal and unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(e) This Contract, including Exhibits A through C attached hereto and the other items delivered pursuant hereto, constitutes the complete agreement of the parties and supersedes all prior understandings or written or oral agreements between the parties respecting the within subject matter and cannot be changed amended or supplemented except by their written consent. This Contract as well as any amendments and/or supplements may be executed in counterparts, all of which shall be deemed to constitute one document.

(f) Time is of the essence in this Contract. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act. As used herein, any reference to a number of days shall mean calendar days. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

(g) This Contract and all provisions contained herein are strictly confidential. Buyer and Seller are responsible for ensuring that this Contract and all provisions herein are kept confidential by their respective officers, agents, directors, employees, attorneys, brokers, contractors, affiliates, vendors and any other person retained in relation to this Contract.

10. **ASSIGNMENT:** As a part of the Closing, Buyer may assign this Contract without the prior written consent of Seller, but no such assignment shall relieve Buyer, from performing all of the obligations, covenants and agreements of Buyer hereunder, whether arising prior to or after the date of such assignment.

11. **LIKE-KIND EXCHANGE:** Seller may desire to consummate the sale of the Property as a like-kind exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, (the "1031 Election") and the regulations promulgated thereunder. Buyer agrees to cooperate with Seller in this regard and shall, at Seller's request, execute and deliver such documents, instruments, and agreements as may be necessary therefor or related thereto; provided, however, Buyer shall not be obligated to accept title to any other land or property other than the Property or to incur any additional costs or expenses associated with any such 1031 Election.

[12. **SELLER'S RIGHT TO TERMINATE:** Seller shall have the right to terminate this Contract in the event any of the following organizations are sued as a result of this Contract or the transaction provided for herein: SCI Texas Funeral Services, Inc., SCI Management L.P., Service Corporation International.]

13. **BOARD OF DIRECTORS APPROVAL:** This Contract is subject to the approval of the Executive Committee of the Board of Directors of Service Corporation International, the ultimate parent company of Seller, within thirty (30) days of the Effective Date. Seller will notify Buyer of approval or rejection. This Contract shall be void if a written approval is not delivered to Buyer within such thirty (30) day period.

EXECUTED in multiple originals on the dates set forth by each party's signature, but effective upon the Effective Date as set forth below.

**SELLER:**

SCI Texas Funeral Services, Inc.

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

Name: Michael L. Decell

Title: Vice President

Date: \_\_\_\_\_, 2002

**Seller's Address:**

1929 Allen Parkway  
Houston, Texas 77019  
Attention: Dann Narveson  
Real Estate Department  
Phone No.: 713-525-7380

**with copy to:**

Service Corporation International  
General Counsel  
1929 Allen Parkway  
Houston, Texas 77019

**BUYER:**

Williamson County

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

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

Title: County Judge

Date: January 29, 2002

**with copy to:**

*Eugene Taylor*  
*Co. Attorney*  
*405 MK Box 7*  
*Georgetown 78626*



EARNEST MONEY RECEIPT

The Title Company hereby acknowledges receipt of this fully executed Contract and the Earnest Money in the amount of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) on the \_\_\_\_\_ day of \_\_\_\_\_, 2002 (the "Effective Date").

Longhorn Title Company  
309 N. Main  
Taylor, Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

- Exhibit A - Property Description
- Exhibit B - Use Restrictions
- Exhibit C – Seller’s Retained Property

**EXHIBIT A**

**LEGAL DESCRIPTION**

(To be inserted by Seller upon receipt of the Survey and Title Commitment)

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**EXHIBIT B**  
**USE RESTRICTIONS**

The following is a list of the USE RESTRICTIONS affecting the Property that will be included in the Deed and run with the Property:

- (i) Any warehousing, assembling, manufacturing, distilling, refining, smelting, agricultural or mining operations, except for cattle grazing or normal crop production;
- (ii) Any "second hand" store, Army, Navy, or governmental "surplus" store;
- (iii) Any mobile home or trailer court, labor camp, junkyard, stockyard, or animal raising (except that this provision shall not prohibit the temporary use of construction trailers during the periods of construction, reconstruction, or maintenance);
- (iv) Any fire or bankruptcy sale (unless pursuant to court order) or auction house operation;
- (v) Any dry cleaning outlet (other than pick-up and drop-off facilities only), central laundry or Laundromat; provided, that, such facilities may be used on the Property in connection with laundry services provided solely to owners or occupants of the Property;
- (vi) Any automobile, truck, trailer, heavy equipment, mobile home or recreational vehicle sales, leasing or display, including body repair facilities;
- (vii) Any bowling alley or skating rink;
- (viii) Any pet shop, pet quarters, or veterinary service within 250 feet of Seller's Retained Property;
- (ix) Any mortuary, cemetery or location used to sell or solicit sales of pre-need agreements for cemetery or funeral merchandise or services;
- (x) Any establishment selling or exhibiting pornographic materials;
- (xi) Any gasoline, diesel or other fuel or automotive service stations, or any facility providing automotive repairs or services; provided, that, such facilities may be located on the Property so long as they are no closer than 250 feet to the western boundary of the Property and so long as they are part of an office development, are screened such that they cannot be seen from outside the boundary of the Property, and then only to the extent the same provide services to owners or occupants of the Property;
- (xii) Any bar, tavern, or other establishment which sells alcoholic beverages for on or off premises consumption (a restaurant shall be deemed a bar or tavern if more than 50% of gross annual sales therefrom are attributable to the sale of alcoholic beverages);
- (xiii) Any massage parlor, modeling studio or establishment where women or men are engaged in other salacious activities;
- (xiv) Any public or private nuisance;
- (xv) Any use which generates or causes to be generated any noise or sound that is objectional due to intermittence, beat, frequency, shrillness or loudness;

(xvi) Any use which generates or causes to be generated any obnoxious odor;

(xvii) Any use which generates or causes to be generated any noxious, toxic caustic, or corrosive fuel or gas; or any facility used primarily for the storage, use or disposal, whether temporary or permanent, of any Hazardous Substance. For the purposes of this subsection, "Hazardous Substance" means any substance which is (1) toxic, ignitable, reactive, corrosive, radioactive, flammable, explosive, or a human health or safety hazard, including but not limited to asbestos (friable or non-friable), petroleum products, by-products and wastes, polychlorobiphenyls ("PCB's"), (2) defined as "hazardous substances", "hazardous materials", "toxic substances" or "hazardous wastes" in the Environmental Laws, or (3) prohibited or regulated or which requires redemption under any of the Environmental Laws. "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq.; the Clean Air Act; the Federal Water Pollution Control Act; the Safe Drinking Water Act; the Williams-Steiger Occupational Safety and Health Act, and any other applicable statutes, laws, ordinances, rules and regulations of any federal, state or local governmental or quasi-governmental authority or body having jurisdiction over the property;

(xviii) Any use which generates or causes to be generated any dust, dirt, or fly ash in excessive quantities;

(xix) Any use which generates or causes to be generated any unusual fire, explosion, or other damaging or dangerous hazard including the storage, display or sale of explosives or fireworks;

(xx) Any dumping, disposal, incineration, reduction of garbage or refuse (exclusive of garbage containers properly screened); or

(xxi) Any use which involves the installation of any underground storage tanks.

**EXHIBIT C**

**SELLER'S RETAINED PROPERTY**

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**AGENDA ITEM 44**

Discuss and take appropriate action on pending litigation: Carol Collins vs. Williamson County and Eugene Taylor.

No action was taken on this agenda item.

**AGENDA ITEM 45**

Comments from commissioners.

**Commissioner Boatright** reported that the County received \$250,000.00 from Capital Metro for Cypress Creek Road.

**COMMISSIONERS' COURT ADJOURNED AT 1:35 P.M. ON TUESDAY, JANUARY 29, 2002.**