



CONTRACT FOR SALE AND PURCHASE

Commercial Real Estate

This **CONTRACT FOR SALE AND PURCHASE** (the "Contract") is made and is effective as of the latest date set forth below the signature lines appearing at the end of this Contract (the "Effective Date") by and between:

Ronald A. Goodwin and Michelle Goodwin, debtors-in-possession pursuant to In re Ronald A. Goodwin and Michelle Goodwin, United States Bankruptcy Court for the District of Kansas Case No. 17-12205 (the "Seller")

and

_____ or assigns (the "Buyer")

For and in consideration of the mutual promises, covenants, and payments hereinafter set out, the parties hereby agree to and with each other, as follows:

1. PROPERTY: Subject to the terms of this Contract, Seller agrees to sell and Buyer agrees to purchase the real estate commonly known as:

_____ and legally described as follows:

See attached – Exhibit A

including the improvements thereon and appurtenances thereto belonging (the "Real Estate").

2. PURCHASE PRICE: Buyer agrees to pay to Seller as consideration for the promises and covenants made herein and conveyance of the Real Estate, the sum of \$_____ (the "Purchase Price"), payable as follows:

- a. Subject to paragraph 22, concurrently with the execution of this Contract, the Buyer must deposit with Security 1st Title (Company Name), non-refundable earnest money in the form of (select one): ☐ cash; ☐ check; or ☐ immediately available, certified funds; and in the amount of \$_____ (the "Earnest Money"), as security for the performance of the Buyer's obligations under this Contract. The Earnest Money will be applied to the Purchase Price at closing.
- b. The balance of the Purchase Price is due in immediately available, certified funds at closing.

3. CLOSING AND POSSESSION: Buyer agrees to close on or before June 6, 2022. Buyer and Seller will have the necessary funds available to close this Contract, payable by immediately available, certified funds, at closing. Possession of the Real Estate will be delivered to Buyer at closing subject to existing tenant rights if applicable. In any event, the act of closing by Buyer constitutes an **ABSOLUTE AND IRREVOCABLE ACCEPTANCE** of the Real Estate in whatever condition and any title to the same without regard to marketability or any related title matter.

4. AGENCY DISCLOSURE: Seller and Buyer agree that brokers, identified in the Real Estate Agency Disclosure(s) included in this Contract, is (are) the only real estate brokers negotiating this sale, and Seller agrees to pay Commission Rate or Buyers Premium pursuant to the agreement between Seller and brokers. McCurdy Real Estate & Auction, LLC ("McCurdy") is functioning as a Seller's Agent.

(Co-Op/Referring Broker/Licensee – if applicable) – Selling Side

_____ of _____ is functioning as _____

Any party to this Contract through whom a claim to any broker's, finder's or other fee is made, contrary to the representations made above in this paragraph, will indemnify, defend, and hold harmless the other party to this Contract from any other loss, liability, damage, cost or expense, including, without limitation, reasonable attorney's fees, court costs, and other legal expenses paid or incurred by the other party, that is in any way related to such a claim. The provisions of this paragraph will survive closing or termination of this Contract. Seller and Buyer acknowledge receipt of the Real Estate Brokerage Relationships brochure.

5. CONVEYANCE: Seller will convey title to the Real Estate to Buyer, at closing, free of all encumbrances, except: the permitted exceptions (as defined in this Contract); easements, restrictions, declarations, and reservations of record, if any; taxes and assessments, general and special, not now due and payable; the rights of the public in and to parts thereof in streets, roads, and alleys; zoning or other land use rules, regulations, ordinances, or laws; and existing tenant rights, if any.

6. FINANCING AND APPRAISER/LENDER REQUIREMENTS: The Real Estate is being sold on a cash basis. The Buyer's obligations under this Contract are not contingent on Buyer obtaining financing or on any appraiser or lender requirements. It is the Buyer's sole responsibility to satisfy any appraiser or lender requirements.

7. "AS IS, WHERE IS" SALE: The Real Estate was offered or sold at public auction, and is accepted by Buyer in its present, "as is, where is" condition with all faults. The Real Estate is accepted by the Buyer without any expressed or implied warranties or representations from the Seller or Seller's agents, including, but not limited to, the following: the condition of the Real Estate; the Real Estate's suitability for any or all activities or uses; the Real Estate's compliance with any laws, rules, ordinances, regulations, or codes of any applicable government authority; the Real Estate's compliance with environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements; the disposal, existence in, on, or under the Real Estate of any hazardous materials or substances; or any other matter concerning the Real Estate. It was incumbent upon Buyer to exercise Buyer's own due diligence, investigation, and evaluation of suitability of use for the Real Estate prior to bidding on the Real Estate. It was Buyer's responsibility to have any and all desired inspections completed prior to bidding, including, but not limited to, inspections of the following: roof; structure; termite; wood infestation, environmental; survey; encroachments; groundwater; flood designation; presence of lead-based paint or lead based paint hazards; presence of radon; presence of asbestos; presence of mold; electrical; appliances; heating; air conditioning; mechanical; plumbing (to include water well, septic, or lagoon compliance); sex offender registry information; flight patterns, and any other desired inspection, if any. Buyer acknowledges that Buyer was provided an opportunity to inspect the Real Estate prior to the execution of this Contract and that Buyer either performed all desired inspections or accepts the risk of not having done so. Information given is from sources deemed reliable but not guaranteed by the Seller or McCurdy. Buyer acknowledges that any information provided or to be provided by Seller or McCurdy was obtained from a variety of sources. Seller and McCurdy have not made any independent investigation or verification of the information and make no representations as to its accuracy or completeness. In executing this Contract, Buyer is relying solely on Buyer's own investigation of the Real Estate and not on any information provided or to be provided by Seller or McCurdy. Neither Seller nor McCurdy will be liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Real Estate which are not contained in this Contract or in Seller's deed.

8. PRORATIONS: All ad valorem taxes, the current annual installment of special assessments, and rentals (collected or uncollected with deposits transferring to Buyer) will be adjusted and prorated as of closing date, unless otherwise agreed. General taxes will be prorated for the calendar year on the basis of taxes for the previous year unless the previous year's assessed valuation was based on a lesser-improved property, in which case taxes will be determined from the assessed valuation and the officially-established mill levy prevailing at closing. Special assessments will be prorated on the basis of the amount (for the calendar year) ascertainable at the time of closing by the closing agent. Pursuant to Kansas laws, if the Real Estate is subject to any special assessments or is located in an improvement or benefit district, Seller has, by a separate document, disclosed to Buyer the amount of the special assessments on the Real Estate (or if no special assessments have yet been made, that the Real Estate is located in an improvement or benefit district) which separate document has been dated and signed by Seller. Buyer, by also signing and dating such separate document, has acknowledged that Seller's disclosure relating to special assessments was made to Buyer prior to this Contract being entered into.

9. INSURANCE: Seller will maintain current insurance, if any, in force until closing. Buyer will be solely responsible for obtaining insurance to cover any casualty loss occurring after closing, even if possession is retained by Seller after closing.

10. CASUALTY LOSS: If the Real Estate is damaged by casualty before closing and the estimated cost of repair is less than 10% of the Purchase Price, then Seller must repair the damage or compensate Buyer for the cost of repair. If the estimated cost of repair is greater than 10% of the Purchase Price, then the parties will bargain in good faith to renegotiate this Contract. If the renegotiation is unsuccessful, then either Buyer or Seller may cancel this Contract and the earnest money will be refunded promptly to the Buyer and all parties will be released from any further obligation.

11. TITLE EVIDENCE: The Seller will furnish to Buyer a title insurance company's commitment to issue, after closing, a title insurance policy in an amount equal to the Purchase Price naming Buyer as the insured and insuring Buyer against loss or damage by reason of defects in Seller's title, subject to the exceptions in this Contract or those exceptions that are standard to American Land Title Association's Form B (collectively, the "Permitted Exceptions"). The Seller and Buyer will each pay one half the cost of the title insurance. In the event Seller is entitled to a discount, the Seller will receive the full discount. Notwithstanding anything herein to the contrary, Seller has the right to extend closing by up to 30 days in order to attempt to cure any defects in Seller's title. Should the Seller be unable to furnish marketable title to the Real Estate, subject to only the Permitted Exceptions, and should the Contract be terminated for that reason, then the Earnest Money will be refunded promptly to the Buyer and all parties will be released from any further obligation.

12. LIENS: Seller represents and warrants that there are no unpaid (whether recorded or not) chattel mortgages, conditional sales contracts, financing statements, or security agreements affecting any fixture, portion of the Real Estate, or item of personal property covered by this Contract. Any existing liens which the Seller is required to remove under this Contract may be paid and discharged from the sale proceeds at closing.

13. DEED AND DOCUMENTS FOR CLOSING: In the event a title or abstract company prepares a Deed, Affidavit of No Liens, or other necessary documents to complete this transaction, the charge for the same, in addition to the cost of closing the transaction, will be shared equally between the Buyer and Seller.

14. REPRESENTATIONS AND RECOMMENDATIONS: It is hereby agreed and acknowledged by the parties that neither the listing nor selling broker/auctioneer, nor their agents, employees, or associates have made, on their own behalf, any representations or warranties, expressed or implied, with respect to the Real Estate. Any information furnished to either party through the Multiple Listing Service or from any other source should be independently verified by that party before that party relies on such information. Notwithstanding anything herein to the contrary, to the extent any warranties or representations may be found to exist, the warranties or representations are between Seller and Buyer. McCurdy may not be held responsible for the correctness of any such representations or warranties or for the accuracy of the description of the Real Estate. McCurdy is acting solely as broker/auctioneer and is not liable to Seller or Buyer for any damages arising out of or related to this Contract or arising out of or related to either party's failure to abide by the Contract. The provisions of this paragraph will survive closing or termination of this Contract.

15. INTERIM MAINTENANCE: Seller agrees to deliver possession of the Real Estate in a like or better condition than it is as of the Effective Date, reasonable wear and tear excepted.

16. DEFAULT AND REMEDIES: If, as a result of a default under this Contract, either Seller or Buyer employs an attorney to enforce its rights, the defaulting party will, unless prohibited by law, reimburse the non-defaulting party for all reasonable attorneys' fees, court costs, and other legal expenses incurred by the non-defaulting party in connection with the default. A party will be in default under this Contract if the party fails to comply with any material covenant, agreement, or obligation within any time limits required by this Contract. Following a default, the non-defaulting party will have the following remedies:

- a. In the event of a default by the Seller, Buyer may: (i) seek to specifically enforce this Contract and recover damages suffered by Buyer as a result of the delay in the acquisition of the Real Estate; or (ii) terminate this Contract by written notice to Seller and, at Buyer's option, pursue any remedy and damages available at law or in equity. If Buyer elects to terminate this Contract in response to a default by Seller, the Earnest Money will be returned to Buyer, in accordance with state law.
- b. In the event of a default by the Buyer, Seller may: (i) seek to specifically enforce this Contract and recover damages suffered by Seller as a result of the delay in the sale of the Real Estate; or (ii) unilaterally terminate this Contract by written notice to Buyer, retain the Earnest Money, and pursue any remedies and damages available at law or in equity, all of which are specifically reserved.

17. CONDEMNATION OR CHANGE OF CONDITION: If, before closing, all or any part of the Real Estate is taken by eminent domain or a condemnation proceeding is filed or threatened against the Real Estate or any part thereof, Seller will promptly provide written notice to Buyer of any such event. Upon notice of such occurrence, Buyer may immediately inspect the Real Estate and may, by written notice to Seller within ten days after receiving Seller's notice, terminate this Contract, and should the Contract be terminated for that reason, then the Earnest Money will be refunded promptly to the Buyer and all parties will be released from any further obligation. Unless this Contract is so terminated, it will remain in full force and effect and Seller will, at closing, assign and transfer to Buyer all of Seller's right, title, and interest in and to any awards that may be made for any taking. If a non-material change in condition occurs with respect to the Real Estate, Seller will remedy such change before closing.

18. FOREIGN INVESTMENT: Seller represents that Seller is not a foreign person as described in the Foreign Investment in Real Property Tax Act and agrees to deliver a certificate at closing to that effect which will contain Seller's tax identification number.

19. 1031 EXCHANGE: Seller and Buyer hereby agree that this transaction may be completed as a like-kind exchange and each party will cooperate with and assist the other party in completing the sale as a like-kind exchange, provided that the cooperating party's tax treatment remains unaffected and any additional costs incurred will be paid by the party requesting the exchange. Buyer has the right at any time prior to closing to assign all or a portion of its rights under this Contract to a "Qualified Intermediary" (as that term is defined in Section 1.1031(k)-1(g)(4)(v) of the Treasury Regulations) in order to accomplish the transaction in a manner that will comply, either in whole or in part, with the requirements of a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"). Likewise, Seller has the right at any time prior to closing to assign all or a portion of its rights under this Contract to a *Qualified Intermediary* for the same purpose. In the event a party assigns its rights under this Contract pursuant to this Paragraph, such party agrees to notify the other parties in writing of such assignment at or before closing. If Seller assigns its rights under this Contract for this purpose, Buyer agrees to: (i) consent to Seller's assignment of its rights in this Contract; and (ii) pay the Purchase Price into a qualified escrow or qualified trust account at closing as directed in writing. If Buyer assigns its rights under this Contract for this purpose, Seller agrees to: (i) consent to Buyer's assignment of its rights in this Contract; (ii) accept the Purchase Price from the qualified escrow or qualified trust account at closing; and (iii) at closing, convey and assign directly to Buyer the Real Estate upon satisfaction of the other conditions to closing and other terms and conditions hereof. Seller and Buyer acknowledge and agree that any assignment of this Contract to a *Qualified Intermediary* will not release a party from any of their respective liabilities and obligations to each other under this Contract, and that no party represents to any other that any particular tax treatment will be given to a party as a

result thereof.

20. BROKERAGE FEES: The party handling the closing is hereby authorized and directed to collect and disburse the brokerage fees at closing.

21. INDEMNIFICATION: Seller and Buyer jointly agree to waive, release, indemnify, and hold harmless McCurdy against any and all losses, claims, damages, liabilities, or expenses, including costs of investigation, attorneys' fees, and disbursements, which may be incurred by McCurdy relative to the performance of McCurdy's duties related to the parties, the Real Estate, or the transaction contemplated by this Contract. Seller and Buyer further jointly agree to waive, release, indemnify and hold harmless McCurdy against any and all losses, claims, damages, liabilities, or expenses, including costs of investigation, attorneys' fees, and disbursements claims, related to the conduct or competency of third parties providing specialized services required or permitted by this Contract, including, but not limited to: lenders, title insurance companies, escrow agents, closing agents, or inspectors or repair personnel, whether those services were arranged by the parties or by McCurdy on behalf of either party. The provisions of this paragraph will survive closing or termination of this Contract.

22. DISPOSITION OF EARNEST MONEY: Pursuant to K.S.A. § 58-3061(g), upon the deposit of earnest money in a broker's trust account, the deposit may be dispersed only: 1) pursuant to written authorization of a buyer and seller; 2) pursuant to a court order; or 3) when the transaction is closed according to the agreement of the parties. Notwithstanding the language of K.S.A. § 58-3061(g), Buyer and Seller agree to the following procedure: "Notwithstanding any other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and Seller agree that failure by either to respond in writing to a certified letter from broker within seven days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within 30 days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto."

23. ASSIGNMENTS: The parties' rights and obligations under this Contract may not be assigned absent the written consent of the other parties to the Contract. Any costs or fees associated with an assignment of a party's rights and obligations under this Contract will be paid by the assignor. Any assignments must be made within 7 business days of the Effective Date.

24. TIME: Time and exact performance is of the essence as to all obligations under this Contract.

25. AUTHORITY: Each person executing this Contract warrants and represents that they are fully authorized to do so.

26. BINDING EFFECT: This Contract will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, heirs, executors, administrators, successors, and assigns.

27. GOVERNING LAW, VENUE, AND JURISDICTION: This Contract is to be governed by and construed in accordance with the laws of Kansas, but without regard to Kansas's rules governing conflict of laws. Exclusive venue for all disputes lies in either the Sedgwick County Kansas District Court or the United States District Court in Wichita, Kansas. The parties submit to and accept the jurisdiction of such courts.

28. WAIVER OF JURY TRIAL: The parties waive the right to trial by jury in all matters regarding this Contract.

29. MODIFICATION AND NON-WAIVER: This Contract may be amended only by an agreement, in writing, signed by all the parties. A failure by either party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Contract or to exercise any right or remedy consequent upon a breach thereof will not constitute a waiver of any such breach or any other covenant, duty, agreement, or condition. A waiver upon one or more occasion will not constitute a bar or a waiver of any right or remedy on any future occasion.

30. SEVERABILITY: In the event that any provision contained in this Contract is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions of the Contract will not be in any way impaired.

31. FURTHER ACTS: The parties agree to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be necessary or convenient to carry out the intent and purpose of this Contract.

32. MERGER: This Contract constitutes the entire agreement between the parties and supersedes any previously executed contracts and representations, verbal or written.

33. INTERPRETATION: The headings used in this Contract are for convenience only and do not constitute a part of this Contract.

All references in the singular are to be construed to include the plural where applicable and the masculine to include the feminine or neuter gender where applicable, and all covenants, agreements, and obligations herein assumed by the parties are joint and several covenants, agreements, and obligations. The language used in this Contract is to be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction is to be applied against any party. If any date under this Contract on which an event is to occur or notice is to be given falls on a Saturday, Sunday, or federal holiday, then such date will be the first business day following such Saturday, Sunday, or federal holiday.

34. SIGNATURE BY ELECTRONIC MAIL AND IN COUNTERPART, AGREEMENT TO USE ELECTRONIC SIGNATURES: This Contract may be executed in any number of counterparts, and each such counterpart will be deemed to be an original instrument, but all such counterparts together will constitute one Contract. The exchange of copies of this Contract and of signature pages by facsimile transmission or as a PDF attached to an email will constitute effective execution and delivery of this Contract as to the parties and may be used in lieu of the original Contract for all purposes. The parties agree that this transaction may be conducted through electronic means in accordance with the Kansas Uniform Electronic Transactions Act (K.S.A. § 16-1601 *et seq.*).

35. LEGAL COUNSEL: The form of this Contract has been approved by legal counsel for McCurdy as being legally sufficient to facilitate the sale of the Real Estate. The parties acknowledge that such legal counsel for McCurdy has acted as a scrivener at the direction of McCurdy in the preparation and drafting of this Contract. Each party acknowledges that such party is a sophisticated party in the type of transaction reflected in this Contract and has been advised by independent legal counsel concerning such party's decision to enter into this Contract or has chosen to enter into this Contract without the benefit of legal counsel even though the parties had sufficient opportunity and resources to obtain adequate, independent legal counsel.

36. LENDER INFORMATION AUTHORIZATION: Seller hereby authorizes closing agent to obtain payoff information from Seller's lender.

37. SUBJECT TO COURT APPROVAL: The parties' obligations under this Contract are contingent upon final approval of the United States Bankruptcy Court for the District of Kansas in accordance with the Second Amended Plan of Reorganization Dated September 12, 2018 (Doc. 285), Bankr. Case No. 17-12205, *In re Ronald A. Goodwin and Michelle L. Goodwin*.

38. PERSONAL PROPERTY: Scale onsite will be removed prior to closing. Buyer understands and agrees that Seller's timely removal of the scale or any personal property from the premises shall not be a prerequisite to closing and that the personal property may be abandoned by Seller.

39. ADDITIONAL TERMS:

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(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, Seller and Buyer execute this Contract on the dates indicated below.

Buyer _____

Print Name _____

Title _____

Company _____

Date _____

Seller _____

Print Name _____

Title _____

Company _____

Date _____

Buyer _____

Print Name _____

Title _____

Company _____

Date _____

Seller _____

Print Name _____

Title _____

Company _____

Date _____

=====For Office Use Only=====

Co-Op/Referring Broker/Licensee – Selling Side

Agent _____

Email _____

Firm _____

Phone _____ Fax _____

McCurdy Real Estate & Auction, LLC

Agent _____

Email _____

Email _____

Phone _____ Fax _____

Title/Closing Company

Company _____

Address _____

City/State _____

Co-Op/Referring Broker/Licensee – Listing Side

Agent _____

Email _____

Firm _____

Phone _____ Fax _____

Exhibit "A"

(the "JBDRH Collateral")

Parcel 1:

Lot 1, Block 1, in Wichita Stockyard Addition, an addition to Wichita, Sedgwick County, Kansas.

Parcel 2:

A tract of land lying within a portion of Lot 2, Block 1, Wichita Stockyard Addition, an addition to Wichita, Sedgwick County, Kansas, said tract being more particularly described as follows: Commencing at the Northwest Corner of Lot 3, Block 1, said Addition; thence along the common line of said Lots 2 and 3, on a platted bearing of South 00°53'06" East, 60.00 feet to the POINT OF BEGINNING; thence continuing South 00°53'06" East, 275.00 feet to the Southwest Corner of said Lot 3; thence South 21°25'03" West, 15.03 feet to the South line of said Lot 2; thence along said South line, North 82°12'32" West, 313.54 feet to a point on a curve to the right; thence along the said curve 297.67 feet, said curve having a central angle of 81°12'56", a radius of 210.00 feet, and a long chord distance of 273.37 feet, bearing North 41°36'04" West; thence North 00°59'36" West, 91.33 feet to the Northwest Corner of said Lot 2; thence along the North line of said Lot 2, North 88°45'32" East, 474.16 feet; thence South 00°53'06" East, 60.00 feet; thence north 88°45'32" East, 20.00 feet to the point of beginning.

Parcel 3:

A tract in the Northwest Quarter of Section 9, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as: Beginning 546.7 feet East and 661.7 feet South of the Northwest Corner of Section 9; thence East along a line parallel to the North line of said Section 9, a distance of 446.3 feet; thence South along a line parallel to the West line of said Section 9, a distance of 30 feet; thence East along a line parallel to the North line of Section 9, a distance of 3 feet; thence South along a line parallel to the West line of said Section 9, a distance of 1066.05 feet; thence along a line forming an angle of 26°15' to the left from the above course a distance of 5 feet, more or less, to the West line of the right of way of the Missouri-Pacific Railway Company; thence in a Southwesterly direction along the West line of said right of way to the point of intersection of said West line of said right of way and the East line of the right of way of the Atchison, Topeka and Santa Fe Railway Company; thence in a Northwesterly direction along said East line of said right of way of the Atchison, Topeka and Santa Fe Railway Company a distance of 933.15 feet; thence East along a line parallel to the North line of said Section 9, a distance of 20.35 feet; thence in a Northeasterly direction with an angle to the right of 75°27' a distance of 87.95 feet; thence North with a deflection angle to the right of 14°59' a distance of 220.8 feet to the place of beginning.