

EARNEST MONEY CONTRACT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This Earnest Money Contract (“Contract or “Agreement”) is made by and between Frank Phillips College, 1301 W. Roosevelt, Borger, Texas 79007, hereinafter referred to as “Donor,” and Borger Independent School District, 200 East Ninth Street, Borger, Texas 79007, hereinafter referred to as “Donee,” upon the terms and conditions set forth herein.

ARTICLE I

1.01 Donor hereby agrees to donate to Donee, and Donee hereby agrees to accept from Donor, a tract of land including improvements (the “Property”), described as:

Lots 4 through 7, Block 2, Isom Addition #3, City of Borger, Hutchinson County, Texas

1.02. The “Purchase Price” of the Property shall be the sum of Zero and no/100 dollars (\$00.00) as this transaction is a donation.

ARTICLE II

Condition of Title and Title Report

2.01. Preliminary Title Report. Donee, at Donee’s sole cost and expense, shall obtain a preliminary title report (the “Title Report”) to be issued concerning the Property. Donee shall give Donor written notice on or before the expiration of 30 days after Donee receives the Title Report, or after Donee has received any further documentation requested from the Title Company pertaining to title issues appearing in the Title Report, whichever is later, that the condition of title, as set forth in the Title Report, is not satisfactory, and in such event Donor may, but shall not be required to, promptly make all reasonable efforts to eliminate or modify all unacceptable matters to the reasonable satisfaction of Donee. In the event Donor fails or is unable to eliminate such

exceptions to title within 15 days after receipt of written notice from Donee to cure such exceptions, Donee, at its option and as its sole and exclusive remedy, may terminate this Contract without liability and refuse to accept the Property. Donee may also, at its option, either extend the date for Closing or waive any unacceptable matters and require that Donor proceed to closing as required herein.

ARTICLE III

Representations and Warranties of Donor

3.01. Donor hereby represents and warrants to Donee as follows, which representations and warranties shall be deemed made by Donor to Donee as of the date of Closing:

a. there will be no liens, assessments, or security interests against the Property arising by, through, or under Donor, which will not be satisfied out of the sale proceeds except for such interests as are being expressly assumed by Donee, and assumed loans, if any, will not be in default.

b. there is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof, nor to the best knowledge and belief of Donor is any such proceeding or assessment contemplated by any governmental authority.

c. Donor, to its knowledge, has complied with all applicable laws, ordinances, regulations, statutes, rules, restrictions, and environmental laws relating to the Property, or any part thereof.

d. There is no pending or threatened litigation, or contractual obligations arising out of or affecting the Property, to Donor's knowledge, which would interfere with its permitted uses.

e. Neither the Property, nor any part thereof, is subject to a leasehold interest, and there are no parties in possession as lessees, tenants at sufferance, or to Donor's knowledge, trespassers.

3.02 For purposes of Section 3.01, references to the "actual knowledge" or "knowledge" of Donor refer only to the current, actual knowledge of Donor, without duty of inquiry, and will not be construed, by imputation or otherwise, to refer to the knowledge of any property manager

or to impose any personal liability or duty to investigate the matter to which actual knowledge, or the absence thereof, pertains.

3.03 The above warranties and representations shall survive Closing and recordation of the Deed for a period of twelve (12) months and shall remain enforceable under this Contract. If any representation in this Contract is untrue in any material respect on the Closing Date, this Contract may be terminated by Donee, as its sole and exclusive remedy, without liability to Donor.

ARTICLE IV

Closing

4.01. The Closing shall be held at Pioneer Lawyers Land Title Service, located at 301 West 6th Street, Borger, Texas 79007, herein known as "Title Company," on or before 30 days after the Effective Date. However, the date of the Closing may be extended by Donee for an additional 30 days if any of the following conditions exist: (a) upon Donee's receipt of the Title Report for the Property, Donee requests further documentation from the Title Company pertaining to title issues appearing in the Title Report; (b) Donor has not eliminated unacceptable matters affecting title to the Property as provided in Section 2.01; or (c) Donee has a Phase 1 environmental assessment conducted and it shows that further environmental assessment would be necessary or proper.

4.02 At the Closing, Donor shall deliver to Donee a duly executed and acknowledged Special Warranty Deed conveying good and marketable title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, and restrictions, excepting however (a) the exceptions, easements, reservations, and restrictions approved by Donee pursuant to this Agreement, and (b) any other exceptions waived or approved by Donee in writing. The Special Warranty Deed shall contain a reversion clause that provides that if the Donee ceases to

use the Property for public purposes the Property will revert to Donor after an appropriate notice and cure period.

4.03 Donee may, but is not required to, obtain a Texas Owner's Title Policy, at Donee's sole expense, issued by the Title Company, in the full amount of the value of the Property, insuring Donee's fee simple title to the Property.

4.04 Closing Costs. The following costs and expenses of closing in consummating the sale and purchase of the Property shall be borne and paid as follows:

Owner's Title Policy:	Donee
Any title endorsement:	Donee
Escrow fee:	Donee and Donor
Survey and replatting costs, if any:	Donee
Filing fees:	Donor for release of liens, if any; Donee for all other documents required to be recorded
Attorney's fees:	Donor and Donee to their respective attorneys
General Real Estate Taxes:	General Real Estate taxes for the then current year relating to the Property shall not be prorated between Donee and Donor as part of the closing of this transaction and no credit shall be given to either party relating to the amount of Donor's taxes at the closing of this transaction. Any ad valorem tax liability of Donor existing as of the date of the closing of this transaction shall not be affected by the closing of this transaction. Donee as a political subdivision of the state of Texas has no ad valorem tax liability and assumes no liability or responsibility for any such taxes as may be owed by Donor at the time of closing or any rollback taxes assessed post-closing.

ARTICLE V

5.01. In the event Donor shall fail to consummate the sale of the Property in violation of Donor's obligation to do so, Donee may, as its sole and exclusive remedy, either: (i) enforce specific performance or (ii) terminate this Contract in writing and receive the Earnest Money, thereby releasing the parties from this Contract.

5.02 In the event Donee should fail to consummate the purchase of the Property in violation of Donee's obligation to do so, and Donor is not in default hereunder, Donor shall have the right to be paid the Earnest Money as its sole remedy. Donor and Donee have made provisions for liquidated damages because it would be difficult to calculate, on the date hereof, the amount of actual damages for such breach, and Donor and Donee agree that the liquidated damages represent a reasonable compensation to Donor for such breach.

ARTICLE VI

Miscellaneous

6.01 This Contract is subject to the following additional terms and conditions:

a. Except for the express representations, warranties and covenants of Donor in this Contract, Donee expressly acknowledges that the Property is being sold and accepted AS IS, WHERE IS and Donor makes no representations or warranties with respect to the physical condition or any other aspect of the Property, including, without limitation, (i) the structural integrity of any improvements on the Property, (ii) the manner, construction, condition, and state of repair or lack of repair of any of such improvements, (iii) the conformity of the improvements to any plans or specifications for the Property, including but not limited to any plans and specifications that may have been or which may be provided to Donee, (iv) the conformity of the Property to past, current or future applicable zoning or building code requirements or the compliance with any other laws, rules, ordinances, or regulations of any government or other body, (v) the financial earning capacity or history or expense history of the operation of the Property, (vi) the nature and extent of any right of way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise, (vii) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, susceptibility to landslides, sufficiency of undershoring,

sufficiency of drainage, (viii) whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (ix) the existence or non-existence of asbestos, underground or above ground storage tanks, hazardous waste or other toxic or hazardous materials of any kind or any other environmental condition or whether the Property is in compliance with applicable laws, rules and regulations, (x) the Property's investment potential or resale at any future date, at a profit or otherwise, (xi) any tax consequences of ownership of the Property, or (xii) any other matter whatsoever affecting the stability, integrity, other condition or status of the land or any buildings or improvements situated on all or part of the Property (collectively, the "Property Conditions"), and **DONEE HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS DONEE MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED, TO ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE** relating to the Property, its improvements or the Property Conditions, such waiver being absolute, complete, total and unlimited in any way. In deciding to purchase the Property, Donee is relying solely upon its own investigation of the Property's condition and not upon any representation or warranty from Donor or its agents. Notwithstanding anything to the contrary, all of the terms and provisions of this Section 6.01(a) shall survive the Closing.

b. The above provisions shall be included in the deed to the Donee, with appropriate modification of terms as the context may require.

c. Donee, at Donee's expense, may obtain an Environmental Assessment Report prepared by an environmental specialist. Within 30 days after the Effective Date of the Contract,

Donee may terminate the Contract by furnishing Donor a copy of any environmental report that, in Donee's sole and absolute discretion, adversely affects the use of the Property.

d. No Waiver. Donor and Donee expressly understand that each of Donor and Donee is a political subdivision of the State of Texas, and nothing in this Contract will be construed as a waiver or relinquishment by Donor or Donee of its right to claim such exemptions, privileges, and immunities as may be provided by law. The parties intend that this Contract not contain any terms or conditions for the provision of goods and services to either Donor or Donee, and that this Contract fall outside the scope of subchapter I of Chapter 271, Local Government Code.

e. Assignment of Contract. This Contract is not assignable by Donee or Donor.

f. Survival of Covenants. The representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, which are expressly provided herein to survive Closing or which pertain to a period of time following Closing, shall survive Closing for a period of twelve (12) months and shall remain enforceable and binding during such time.

g. Texas Law to Apply. This Contract shall be construed under and in accordance with the laws of the State of Texas. Venue for any action under this Contract shall be in Hutchinson County, Texas.

h. Parties Bound. This Contract shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, representatives, successors and assigns.

i. Legal Construction. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this

Contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

j. Prior Agreements Superseded. This Contract constitutes the sole agreement of the parties and supersedes any prior understandings or written or oral agreement between the parties respecting the within matter.

k. Brokers' Fees. Donor and Donee each represent and warrant that it has not engaged the services of any real estate agent or broker in connection with the negotiation or execution of this Contract or the sale and purchase of the Property.

l. Headings. Section headings or captions are used in this Contract for convenience only and do not limit or otherwise affect the meaning of any provision of this Contract.

m. Holidays, Etc. Whenever any time limit or date provided herein falls on a Saturday, Sunday, or legal holiday under the laws of the State of Texas or on a day when federal banks are closed, then that date is extended to the next day that is not a Saturday, Sunday, or legal holiday or a day when federal banks are closed.

n. Rule of Construction. Each party and its counsel have reviewed and revised this Contract. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party may not be employed in the interpretation of this Contract or any amendments, schedules, or exhibits to this Contract.

o. Time of the Essence. Time shall be of the essence in delivering any notice provided for herein and/or exercising any rights and/or remedies provided herein.

p. Counterparts and Facsimile Signatures. This Contract may be executed in one or more counterparts. Each counterpart is an original and proof of this Contract may be made without more than one counterpart. Signatures transmitted by Adobe Sign, DocuSign, RightSignature,

electronic mail, or other digital or electronic means will be treated as original signatures for all purposes hereunder, each of which shall be of the same legal effect, validity, and enforceability as a manually executed signature.

q. Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered by Donor and Donee , Donor and Donee agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered in connection with the performance of this Contract and consummation of the Closing any and all such further acts, instruments, deeds, documents and assurances (in each case in form and substance reasonably acceptable to the party executing and/or performing the same) as may be reasonably required to consummate the transactions contemplated hereby. The foregoing obligation shall survive Closing.

EFFECTIVE as of the date of delivery and receipt of a fully executed original of this Contract to the Title Company (“Effective Date”).

DONOR:

FRANK PHILLIPS COLLEGE

By: _____ DATE: _____
_____, its _____

DONEE:

BORGER INDEPENDENT SCHOOL DISTRICT

By: _____ DATE: _____
President of the Board of Trustees

I acknowledge receipt of a fully executed original of the Contract.

LAWYERS LAND TITLE SERVICE

By: _____

Effective Date: _____ Time: _____