

EARNEST MONEY CONTRACT

1. CONTRACT DATE: \_\_\_\_\_, 20\_\_\_\_.

2. PARTIES: \_\_\_\_\_ (Seller)
agrees to sell and convey to \_\_\_\_\_ (Buyer)
and Buyer agrees to buy from Seller the assets of that certain business known as \_\_\_\_\_
located at \_\_\_\_\_.

3. CONTRACT SALE PRICE:

- A. Cash Payable by Buyer at Closing ..... \$ \_\_\_\_\_
B. Sum of all notes and debts assumptions described in Section 4 below ..... \$ \_\_\_\_\_
C. Total Contract Sales Price (Sum of 3A and 3B) ..... \$ \_\_\_\_\_

4. FINANCING: The sum described in paragraph 3B above shall be paid as follows (Check applicable boxes below):

- [ ] A. ASSUMPTION OF PROMISSORY NOTE: Buyer shall assume the unpaid principal balance of a promissory note payable to .
dated \_\_\_\_\_, which unpaid balance at closing will be \$\_\_\_\_\_. Buyer's initial payment shall be the
first payment due after closing. The cash payable at closing shall be adjusted by the amount of any variance in the loan
balance(s) stated above; provided, if the total principal balance of all assumed loans varies at closing from the total of the
amount(s) stated above by amount greater than \$250.00. If the noteholder on assumption requires modification of the
loan documents which are unacceptable to Buyer, or the noteholder refuses to allow assumption of said note, Buyer may
terminate this contract and the Earnest Money shall be refunded to Buyer.
[ ] B. ASSUMPTION OF EQUIPMENT LEASES: Buyer shall assume Seller's indebtedness on equipment leases in the amount of
\$\_\_\_\_\_. Buyer's initial payment shall be the first payment due after closing. The [ ] cash payable at closing [ ]
Buyer's note to Seller shall be adjusted by the amount of any variance in the Seller's indebtedness by an amount greater
than \$250.00. If the Lessor refuses to allow assumption of said indebtedness, Buyer may terminate this contract and the
Earnest Money shall be refunded to Buyer.
[ ] C. THIRD PARTY FINANCING: A third party first lien note of \$\_\_\_\_\_. Buyer shall apply for all third party financing
within \_\_\_\_\_ days after effective date of this contract and shall make every reasonable effort to obtain the same. If such
financing or noteholder's waiver is not obtained within \_\_\_\_\_ days after effective date hereof, this contract shall
terminate and the Earnest Money shall be refunded to Buyer.
[ ] D. SELLER FINANCING: A Secured Promissory Note from Buyer to Seller of \$\_\_\_\_\_, bearing \_\_\_\_\_ %
interest per annum, and payable upon the terms and conditions as follows:
[ ] (1) In one payment of \$\_\_\_\_\_ due \_\_\_\_\_ days after the date of the note plus accrued interest.
[ ] (2) \$\_\_\_\_\_ payable in [ ] monthly [ ] other \_\_\_\_\_ installments of \$\_\_\_\_\_
including interest beginning 30 days after the date of the note and continuing in equal installments for \_\_\_ months when
the entire balance of the note shall be due and payable. Any Seller financed note may be prepaid in whole or in part
without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and
interest shall immediately cease on the prepaid principal. This note shall be subject to a right of offset. The lien securing
payment of such note will be inferior to any lien securing any other note described in paragraph 4A or 4B above. Buyer
shall furnish Seller with a financial statement within seven (7) days after the effective date of this contract. If Buyer's
credit history or financial statement is not reasonably acceptable, Seller may terminate this contract within five (5) days
after receipt of such information by giving written notice to Escrow Agent and the Earnest Money shall be refunded to
Buyer. If Seller does not give notice of termination in writing within the time provided, Seller shall be deemed to have
approved Buyer's credit. Buyer hereby authorizes Buyer's credit report to be furnished to Seller.

5. EARNEST MONEY: \$\_\_\_\_\_ is herewith tendered and is to be deposited as Earnest Money with Lawyers Escrow
Company as Escrow Agent, upon execution of the contract by both parties. Buyer has \_\_\_\_\_ days from the contract date to

submit cancellation of this contract in writing to broker. The earnest money shall be subject to forfeiture if cancellation occurs after \_\_\_\_\_ days.

6. **ASSETS INCLUDED:** The following assets are included in the sale of the business herein (check all that are applicable):  
 Business Trade Name  Domain Name  Furniture, Fixtures and Equipment  Leasehold Improvements  Lease Rights  
 Contract Rights  On-Hand Inventory  Business Telephone Number  Customer List  Computer Software  
 Other: \_\_\_\_\_

7. **ASSETS EXCLUDED:** The following assets are specifically excluded in the sale of the business herein. (check all that are applicable):  Cash on Hand  Accounts Receivable  Lease Deposit  Utility Deposits  Other: \_\_\_\_\_

8. **RIGHTS OF ASSIGNMENT:** Buyer reserves the right to assign the rights and responsibilities under this earnest money contract to a corporate entity to be formed by Buyer prior to closing date. In such event, Buyer agrees to personally guarantee all notes referenced in paragraph 4 above and the payments of the property lease, if any, to Landlord.

9. **SPECIAL CONDITIONS AND/OR CONTINGENCIES (if any):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**10. INVENTORY:**

- A. Sales Price will increase or decrease according to variation in Inventory (stock held for resale) value, at cost, above or below \$\_\_\_\_\_. Buyer is not obligated to accept more than \$\_\_\_\_\_ worth of inventory at closing.
- B. Any adjustment to the Sales Price because of Inventory variation will increase or decrease  cash due at closing  the principal amount and installments payable on the Promissory Note from Buyer payable to Seller. (check applicable box).
- C. Inventory value shall be determined by Buyer and Seller jointly on or before the Closing Date. Inventory value, at cost, shall be determined by using  original invoice costs  \_\_\_\_\_ (\_\_\_\_\_% ) percent of retail price. (check applicable box).
- D. If a professional inventory firm is employed, the cost of the professional inventory firm's services will be paid one half (1/2) by Buyer and one half (1/2) by Seller.

11. **LEASE:** Seller agrees to transfer the existing lease to Buyer, and Seller agrees to obtain the Landlord's written consent, if Landlord's consent is required to the transfer of the existing lease to Buyer, on or before the Closing Date. This transfer may be an assignment or sublease. Buyer agrees to furnish all information (Financial Statement, Credit References and Resume) requested by the Landlord within five (5) days after effective date of this contract and Buyer agrees to be interviewed by the Landlord, if required, to obtain the Landlord's written consent to the transfer. Buyer agrees to reimburse Seller, at closing, for any lease deposits not refunded by Landlord to Seller, the same being transferred from Seller to Buyer.

A. This Earnest Money Contract is conditioned upon Landlord's written consent to the following revisions, amendments, or extensions to Seller's existing lease: \_\_\_\_\_

B. This Earnest Money Contract is conditioned upon Buyer obtaining a new lease under terms and conditions satisfactory to Buyer.

12. **ACCOUNTING RECORDS:** This Earnest Money Contract is contingent upon Buyer being satisfied as to Seller's financial representations made on the business. Seller agrees to allow Buyer to inspect all accounting records of the business within three (3) days of the date that this Earnest Money Contract is executed by all parties to in order to satisfy Buyer as to the validity of the Seller's financial representations. Buyer agrees to complete the inspection of the accounting records within seven (7) days of the date that this Earnest Money Contract is executed by all parties. Buyer and Seller agree that if Buyer, after inspecting the accounting records of the business, is not satisfied with the Seller's financial representations made on the business, Buyer may withdraw from this Earnest Money Contract by giving written notice to Escrow Agent within seven (7) days after the date this Earnest Money Contract is executed by all parties. Upon receipt of said written notice, Escrow Agent will

refund the Earnest Money received herein, less any expenses incurred on Buyer's behalf, and this Earnest Money Contract shall be deemed null and void. Buyer's failure to give said written notice will be deemed as Buyer's waiver of this condition.

13. **RESTRICTED COMPETITION:** At Closing, Seller and the direct legal owners of Seller agree to sign a covenant not to compete in same or similar business as an employee, partner, owner, stockholder, or in any other manner, within a \_\_\_\_\_ mile radius of the present business location for a period of \_\_\_\_\_ consecutive years from the Closing Date.
14. **TRAINING:** Seller's representative shall provide purchaser with training in all aspect of the business at no additional cost. Training shall start immediately after closing and continue for \_\_\_\_\_ business days.
15. **CLOSING DATE:** The closing of the sale shall be on or before \_\_\_\_\_ 20 \_\_\_\_, at the  Dallas  Houston  Austin  San Antonio offices of Lawyers Escrow Company, or  \_\_\_\_\_.
16. **POSSESSION DATE:** The possession of the business shall be delivered to Buyer, in its present condition, ordinary wear and tear excepted at closing.
17. **EFFECTIVE DATE:** The effective date of sale shall be at closing, or  \_\_\_\_\_.
18. **CLOSING DOCUMENTS:** Documents to close this sale shall be prepared by a licensed attorney on behalf of the Buyer and Seller. Buyer and Seller agree to each pay one-half (1/2) of the legal fees for preparation of said documents. Buyer and Seller shall each be responsible for their own legal fees, if any, incurred on their behalf as a result of this transaction.
19. **PRORATIONS:** The following items shall be prorated as of the Closing Date:  Rent  Taxes  Other: \_\_\_\_\_
20. **WARRANTY:** Seller warrants, at closing (a) the business and assets being sold and conveyed to Buyer will be transferred free and clear of all debts, encumbrances, taxes (including payroll, sales and excise taxes) except for those debts to be assumed by Buyer as stated herein; (b) the business is in compliance with all laws, rules and regulations regarding the operation of the business and its facilities; and (c) at the time of physical possession is delivered to Buyer, all equipment will be in working order and the premises will pass all inspections necessary to conduct such business.
21. **INSPECTION:** Buyer has personally examined the business and assets and has relied upon his personal examination in making this offer, and not upon any statements or representations by the Broker or agents of the Broker. Buyer is hereby informed that the Broker has not verified the accuracy of any information, including financial representations, provided by Seller to Broker.
22. **CASUALTY LOSS:** If any part of the business or assets are damaged or destroyed by fire or other casualty loss, Seller shall restore the same to its previous condition as soon as reasonably possible, but in the event by Closing Date, and if Seller is unable to do so by Closing Date, without fault, this contract shall terminate and the Earnest Money shall be refunded with no Broker's fee due.
23. **DEFAULT:** If Buyer fails to comply herewith, Seller may, at Seller's option, either enforce specific performance or terminate this contract and receive after payment to Escrow Agent for any costs involved, the balance of the Earnest Money as liquidated damages, one-half (but not exceeding the agreed Broker's Fee) shall be paid by Seller to Broker in full payment for Broker's services. If Seller is unable without fault to deliver the proper lease documents, or is unable without fault to secure the approval of any creditor to any debt assumption called for herein, Buyer may terminate this contract and receive the Earnest Money after payment to Escrow Agent of any costs involved as the sole remedy and no Broker's Fee shall be earned. If Seller fails to comply herewith for any other reason, Buyer may (i) terminate this contract and receive the Earnest Money, after payment to the Escrow Agent for any costs involved, thereby releasing Seller from this contract (ii) enforce performance hereof, or (iii) seek such other relief as may be provided by law. If completion of sale is prevented by Buyer's default, and Seller elects to enforce specific performance, the Broker's Fee is payable only if and when Seller collects damages for such default by suit, compromise, settlement or otherwise, and after first deducting the expenses of collection, and then only in an amount equal to one-half of that portion collected, but not exceeding the amount of Broker's Fee.
24. **ATTORNEY'S FEES AND COURT COSTS:** Any signatory to this contract who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this contract or transaction shall be additionally entitled to recover court costs and reasonable attorney fees from the non-prevailing party. Escrow Agent, as interpleader, shall not be liable for court costs or attorney's fees, and shall be entitled to recover court costs and attorney fees incurred as a result of any interpleader action from any amount that has been interpleaded.

**25. ESCROW AGENT:** In order to facilitate closing of this sale, an Escrow Agent shall be employed to receive, deposit and distribute funds for the parties, do a lien and tax search, prepare and obtain execution of escrow instructions, see to the execution and distribution of appropriate documents evidencing the terms and conditions of this sale by and between the respective parties and see to the proper closing of sale, recordation of documents and distribution of funds. Buyer and Seller each agree to appoint Lawyers Escrow Company as Escrow Agent for this sale and each agrees to pay one-half (1/2) of the Escrow Agent's fees and expenses. Earnest Money shall be deposited with Escrow Agent, based on the understanding the Escrow Agent (i) does not assume or have any liability for performance or nonperformance of any part (ii) has the right to require the receipt, release and authorization in writing of all parties before paying the deposit to any party and (iii) is not liable for interest or other charges on the funds held. If any party unreasonably fails to agree in writing to any appropriate release of Earnest Money, then such party shall be liable to the other parties to the extent provided in paragraph 23. At closing, Earnest Money shall be applied to any cash down payment required, next to Buyer's closing costs and any excess refunded to Buyer. Either party's claim for Earnest Money is subject to expenses incurred on that party's behalf. Unless instructed otherwise, all escrow fees shall be prorated equally between the Seller and the Buyer.

**26. BROKER'S FEE:** \_\_\_\_\_ ("Broker") has negotiated this sale and Seller agrees, at the Closing Date of this sale or on Seller's default (unless otherwise provided herein), to pay a commission as agreed in the Listing Contract between the Seller and Broker, which Escrow Agent shall pay from the sale proceeds, which said Listing Contract is made a part hereof and incorporated herein as though fully set out.

**27. PARTIAL EXECUTION, OFFER, TIME OPEN:** After signature by one party, and until all parties have signed this document in the same form, it shall operate as an offer or counter offer only, remaining open for three (3) days from the date of the latest signature and such offer or counter offer may be withdrawn prior to the expiration of such three day period only by written notice to Escrow Agent prior to acceptance by the other party.

**28. BENEFIT AND SURVIVAL:** This contract shall inure to the benefit of and be binding on the parties hereto, their heirs, and executors, legal representatives, successors and assigns. All the terms, conditions, provisions, and obligations under this contract, and all instruments related to this transaction, shall survive the closing.

**29. CHOICE OF LAW:** This Contract shall be governed by the laws of the State of Texas, to be performed in the County of Business location herein.

**NOTICE TO BUYER AND SELLER: This agreement is intended to be a legally binding contract. READ IT CAREFULLY. If you do not understand the effect of any part, consult your attorney. If this contract includes real property, Broker advises Buyer to have either the abstract covering the real estate, which is the subject of this contract, examined by an attorney of your choice or be furnished with or obtain a policy of title insurance. BROKER IS NOT QUALIFIED TO PROVIDE LEGAL OR ACCOUNTING ADVICE.**

**BUYER HEREBY AGREES TO PURCHASE ON THE TERMS AS SET FORTH ABOVE (SUBJECT TO ANY CONTINGENCIES).**

**SELLER HEREBY AGREES TO SELL ON THE TERMS SET FORTH ABOVE AND TO PAY A BROKER'S COMMISSION AS PER A SEPARATE AGREEMENT.**

X  
\_\_\_\_\_  
Buyer's Signature Date

X  
\_\_\_\_\_  
Seller's Signature Date

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

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

\_\_\_\_\_  
Title (if corporate entity)

\_\_\_\_\_  
Title (if corporate entity)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

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City, State, Zip

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Telephone No. Email Address

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Telephone No. Email Address