

Bidding Terms Agreement

THIS AGREEMENT dated the ____ day of _____, 20____, is between **Efficient Markets, LLC**, 1902 Washington Avenue, Suite A, Houston, TX 77007, hereinafter designated as "**Efficient Markets**" and _____, hereinafter designated as "**PURCHASER**", _____ (address).

IN CONSIDERATION of **Efficient Markets** permitting **PURCHASER** to submit bids for the purchase of properties being offered for sale or lease on the **Efficient Markets platform** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, **PURCHASER** agrees to be bound by and comply with the terms of this Agreement and acknowledges that all representations, agreements, warranties and assurances provided by **PURCHASER** in this Agreement will be truthful and accurate each time **PURCHASER** bids on property being offered on the **Efficient Markets platform**.

PURCHASER UNDERSTANDS AND AGREES THAT EFFICIENT MARKETS CANNOT GUARANTEE THE COMPLETENESS, TIMELINESS, OR ACCURACY OF THE INFORMATION CONTAINED ON THE WEBSITE AND THAT NOTHING ON THE WEBSITE CONSTITUTES INVESTMENT ADVICE. DECISIONS TO BID SHOULD BE BASED UPON PURCHASER'S DUE DILIGENCE. ANY DECISIONS BASED UPON THE INFORMATION CONTAINED ON THE WEBSITE ARE THE SOLE RISK AND RESPONSIBILITY OF THE PURCHASER.

Acquisition of Property in Online Auction

On the **Efficient Markets platform**, any natural persons, corporate entities (whether for-profit or nonprofit), governmental bodies, and any other recognized legal entities, hereinafter designated as "**SELLER**", may offer Property(ies) for purchase or lease ("Property") pursuant to an agreement provided by **SELLER** that shall be available for review on the **Efficient Markets platform Property Information Page** (hereinafter "**Acquisition Agreement**") with or without a minimum bonus bid. The **Acquisition Agreement** will describe whether the offered property rights constitute a leasehold or fee interest. **Efficient Markets** shall designate a beginning and ending date during which potential purchasers may bid on Property. If **PURCHASER** is the highest bidder at the ending time and date, and the bid meets the minimum bonus, if any, or if **PURCHASER'S** bid is accepted by **SELLER**, **PURCHASER** will be obligated to acquire the PROPERTY, execute the **Acquisition Agreement**, pay the bid amount, pay the buyer's premium, and comply with the terms of the **Acquisition Agreement**.

Agreement to Acquire Property

PURCHASER hereby agrees to participate as a bidder in the Online Auction for Property on the Website. **Efficient Markets** agrees to allow **PURCHASER** to participate in the Online Auction based on the terms and conditions in this Agreement, the **Acquisition Agreement** and any additional terms as posted on the Sale Group or Property Narrative or Property Information Page or Additional Information on the Website. **Efficient Markets** reserves the right to terminate **PURCHASER'S** ability to bid at any time in **Efficient Markets'** sole discretion.

Purchaser's Representations, Agreements, Warranties and Assurances

PURCHASER holds **Efficient Markets** and **SELLER** harmless for any and all violations of Federal or State Securities Laws perpetrated by the **PURCHASER**. **PURCHASER** shall indemnify **Efficient Markets** for all costs including reasonable attorneys' fees incurred by **Efficient Markets** due to any violation or alleged violation of Federal or State Securities Laws.

1. Due Diligence and Independent Evaluation

- A. **PURCHASER** hereby acknowledges and agrees that it has the sole responsibility to examine all information available to **PURCHASER**, whether on the Website or not, concerning the Property being offered. Further, **PURCHASER** acknowledges and agrees **PURCHASER** must contact **Efficient Markets** or the **SELLER** to obtain any additional requested information prior to the beginning date of the Online Auction if **PURCHASER** needs additional information from **Efficient Markets** or **SELLER**. By submitting a bid, **PURCHASER** represents to **Efficient Markets** and **SELLER** that **PURCHASER** has obtained all of the information necessary to acquire the Property.
- B. **PURCHASER** further agrees that it will make an independent evaluation of the Property and acknowledges that **SELLER** and **Efficient Markets** have made no statements or representations concerning the present or future value of the future income, costs or profits, if any, to be derived from the Property.
- C. **PURCHASER** further agrees that it is familiar or prior to bidding will become familiar with legal restrictions (including court decisions) relating to the development of properties, like the Property, which may include limitations on the development of minerals. By submitting a bid, **PURCHASER** understands that legal restrictions including prior or future court decisions could prevent **PURCHASER'S** development of the Property. **PURCHASER** further agrees that it is accepting the risk of such legal impediments to development. **PURCHASER** further agrees the buyer's premium paid by **PURCHASER** is earned by **Efficient Markets** at the time the **PURCHASER** becomes obligated to acquire the Property as provided in this Agreement. **PURCHASER** agrees that the buyer's premium paid by **PURCHASER** is non-refundable.
- D. **PURCHASER** further acknowledges that in making its Bid in the Online Auction, it has relied solely upon its independent examination of the premises, public and **SELLER** records, information which **SELLER** made available to **PURCHASER**, and **PURCHASER'S** bids are based solely on **PURCHASER'S** independent inspections, estimates, computations, evaluations, reports, studies and knowledge of the Property. Any and all information provided by **SELLER** or **Efficient Markets**, as well as any other information provided by **SELLER** or **Efficient Markets** as requested by **PURCHASER**, are furnished to **PURCHASER** at **PURCHASER'S** sole risk. **SELLER** and **Efficient Markets** do not warrant or represent the accuracy of the data presented to the **PURCHASER** and **PURCHASER** agrees to hold harmless **Efficient Markets** and **SELLER** from any reliance by **PURCHASER** on data provided by the **SELLER** and/or **Efficient Markets**. In other words, **PURCHASER** should use the information on the Website to become generally familiar with the Property to be acquired. The **PURCHASER** agrees, however, to perform its own due diligence regarding the Property and to base its decisions on its own due diligence.

2. Purchaser's Assurance of Capacity

- A. **PURCHASER** represents and warrants to **Efficient Markets** and **SELLER** that it is authorized to hold title to the Property, is authorized by all applicable Federal and State laws to be a purchaser or lessee of Property and is in good standing and duly qualified to conduct its business in the jurisdiction where the Property is located.

- B. If **PURCHASER** is a partnership, corporation or limited liability company, **PURCHASER** warrants and represents that the consummation of the transactions contemplated by this Agreement will neither violate nor be in conflict with Articles of Incorporation, By-Laws, Partnership Agreements and/or Management Agreements applicable to **PURCHASER** and that the transactions contemplated by this Agreement have already been duly and validly authorized.
- C. After the conclusion of the acquisition, the **SELLER** will not be obligated to assist the **PURCHASER** in any way in the management or operation of the Property, and the **PURCHASER** will be dependent solely upon its own efforts to realize a profit from or utilize the Property.

3. Agreement Terms

PURCHASER acknowledges and agrees that it has reviewed and will comply with all terms, conditions and requirements contained in the **Acquisition Agreement** by and between **SELLER** and **PURCHASER** if **PURCHASER** is declared to be the successful bidder.

4. Title

PURCHASER acknowledges and agrees that it will hold **SELLER** and **Efficient Markets** harmless as to accuracy of any documents of title to the Property. **PURCHASER** further acknowledges and agrees that **SELLER** does not warrant title either express or implied and all title to the Property is on an "AS IS" basis.

5. Effective Date and Closing

- A. The date of sale for Property acquired in the Online Auction is when **PURCHASER** is declared to be the successful bidder on **SELLER'S** Property as declared by the online auctioneer.
- B. **PURCHASER** acknowledges and agrees upon notification from **Efficient Markets** of **PURCHASER'S** successful Bid, **PURCHASER** is to tender an Executed **Acquisition Agreement** and the total amount of funds required pursuant to the terms of the **Acquisition Agreement** within the timeframe indicated by **SELLER** and **Efficient Markets**. Time is of the essence.

6. Acquisition Agreement to Control

As between **SELLER** and **PURCHASER** the terms and conditions of the **Acquisition Agreement** provided by the **SELLER** and displayed on the Website with each of **SELLER'S** Properties shall supersede and control over any conflicting terms and conditions in this Agreement. Both **PURCHASER** and **SELLER** have a duty to determine any discrepancies between the **Acquisition Agreement** and what is represented in the Property information provided.

7. Indemnifications

- A. **PURCHASER** understands and agrees that **Efficient Markets** and its officers, directors, shareholders, employees, agents, representatives, contractors, successors and assigns are not liable to the **PURCHASER** for **SELLER'S** failure to close the sale or lease transaction, for **SELLER'S** breach of the **Acquisition Agreement**, or for any other breach of duty owed to the **PURCHASER** from the **SELLER**. **PURCHASER'S** sole remedy is against the **SELLER**.
- B. **PURCHASER** AGREES TO INDEMNIFY AND HOLD HARMLESS **EFFICIENT MARKETS** AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, SUCCESSORS AND ASSIGNS AS TO ANY AND ALL LIABILITY AND COSTS, LEGAL OR OTHERWISE, RESULTING FROM BREACHES BY **PURCHASER** OF THIS AGREEMENT OR THE **ACQUISITION AGREEMENT**, INCLUDING WITHOUT LIMITATION ANY AND ALL CAUSES OF ACTION RELATED TO **PURCHASER'S** DUTIES UNDER THIS AGREEMENT OR ANY OTHER LOSS OR DAMAGE OCCURRING AS A RESULT OF **PURCHASER'S** DUTIES OWED TO THE **SELLER** OUTSIDE OF THIS AGREEMENT.
- C. ALL INDEMNIFICATIONS EXTEND TO THE BENEFIT OF THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND ASSIGNS OF EACH INDEMNIFIED PARTY. ALL INDEMNITIES SURVIVE THE TERM AND TERMINATION OF THIS AGREEMENT.

8. Term of Agreement

- A. The term of this Agreement, including any subsequent amendments, is one (1) year from the date **PURCHASER** executes this Agreement, unless **Efficient Markets** provides written notice of termination to **PURCHASER**. Notwithstanding this one (1) year term, **PURCHASER** acknowledges and understands that the terms and provisions of this Agreement may be changed or amended from time to time by **Efficient Markets**, and that **PURCHASER'S** use of **Efficient Markets'** Website to bid or make offers on Property will be subject to and governed by the terms of the **BIDDING TERMS AGREEMENT** posted on **Efficient Markets'** Website as of seven days prior to the beginning date of the Online Auction.
- B. **PURCHASER** UNDERSTANDS THAT IT IS **PURCHASER'S** RESPONSIBILITY AND DUTY TO READ **BIDDING TERMS AGREEMENT** SEVEN DAYS PRIOR TO THE BEGINNING DATE OF ANY ONLINE AUCTION IN WHICH **PURCHASER** WISHES TO PARTICIPATE. BY PARTICIPATING IN SUCH ONLINE AUCTION OR ANY SUBSEQUENT NEGOTIATIONS, **PURCHASER** AGREES TO BE BOUND BY THE TERMS OF SUCH **BIDDING TERMS AGREEMENT**.

9. Miscellaneous

- A. **Governing Law.** **PURCHASER** acknowledges and agrees that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas and the exclusive venue for any action by **PURCHASER** or **SELLER** arising under this Agreement shall be the Federal District Court for the Northern District of Texas, Amarillo Division or in the District Courts of Potter County, Texas. The **Acquisition Agreement**, assignments, and matters pertaining to the **Acquisition Agreement** will be governed by and interpreted in accordance with the laws of the states in which the Property is located.
- B. **Attorneys' Fees and Costs.** In the event that any party to this Agreement resorts to legal proceedings to enforce this Agreement, the prevailing party in such proceedings shall recover all costs incurred by such party, including reasonable attorney fees.

- C. **No Partnerships.** This Agreement does not create and shall not be construed to create a partnership, association, joint venture or fiduciary relationship of any kind or character between the **PURCHASER** and **SELLER**, or **Efficient Markets**, and shall not be construed to impose any duty, obligation, or liability arising from such a relationship by or with respect to the **PURCHASER**, **SELLER**, or **Efficient Markets**.
- D. **Severability.** **PURCHASER** acknowledges and agrees that if any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any applicable rule or law, such provision will be ineffective only to the extent of such invalidity, illegality or unenforceability and all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transaction contemplated hereby is not affected in a materially adverse manner with respect to either party.
- E. **Waiver.** Each party acknowledges and agrees that no waiver by either party of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other portions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- F. **Captions.** **PURCHASER** acknowledges and agrees that the titles and headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.
- G. **Notices.** **PURCHASER** acknowledges and agrees that any notice provided or permitted to be given under this Agreement shall be in writing, and may be served by personal delivery including, without limitation by telecopier or facsimile or by depositing same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with a return receipt requested. Notices deposited in the mail in the manner herein above described shall be deemed to have been given and received upon the date of delivery as shown on the return receipt. Notice served in any other manner shall be deemed to have been given and received only if and when actually received by the addressee. For purposes of notice, the addresses of the parties shall be as follows.

If to: **PURCHASER:**

If to: **Efficient Markets**

Efficient Markets, LLC
1902 Washington Avenue, Suite A
Houston, TX 77007

The address of any party for notice purposes may be changed by such party by giving two days written notice of such change to all other parties to the Agreement.

- H. **Ambiguity.** **PURCHASER** acknowledges and agrees that if any provision of this Agreement is determined to be ambiguous by any Court, the Court shall not construe the ambiguity against **Efficient Markets** on the basis of primary or sole authorship of the Agreement.
- I. **Entirety and Amendments.** **PURCHASER** acknowledges and agrees that this Agreement and the instruments delivered or required to be delivered pursuant to this Agreement supersede all prior negotiations, understandings and agreements between the parties relating to the subject matter hereof and constitute the entire understanding and agreement between the parties. Except for changes as provided by paragraph 8, no alterations, modifications, amendments or changes in the Agreement shall be effective or binding unless in writing and executed by **PURCHASER** and **Efficient Markets**.

PURCHASER

By: _____

Printed or Typed Name and Title