Real Estate Auction
Commercial Marketing Agreement

20318 S. McNew Road
Pretty Prairie, Kansas 67570

Prepared for:

Sarah D. Diamond
and
Jeremy Dick

Prepared by:

Kevin Howell, Auctioneer

J.P. Weigand & Sons, Inc.
150 N. Market, Wichita, KS 67202
(316) 262-6400
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This Real Estate Auction Commercial Marketing Agreement ("Agreement"), is made and entered into by and between Sarah D. Diamond and Jeremy Dick, hereinafter referred to as "Seller", and J.P. WEIGAND & SONS, INC., a Kansas corporation, hereinafter referred to as "Auction Company" or "Broker" and is specific to the property (the "Property" whether one or more) which is the subject of this Agreement and is briefly described as follows:

Ninnescah Township, S06, T26, R05W, Acres 143.99, Lots 3 and 4 Less Road Right-of-Way, commonly known as 20318 S McNew Road, Pretty Prairie, Reno County, Kansas 67570

Exact legal to be determined by title commitment. See attached Exhibit A for a general depiction of Property.

In consideration of the mutual covenants set out and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. ***Type of Auction (check only one)***

☒ A. Subject to Seller Confirmation - The Property will be sold subject to Seller confirmation (i.e., when the high bid is determined at the sale, the Auction Company shall notify Seller to obtain Seller's approval or rejection of that bid), with a minimum reserve to be determined prior to commencement of the auction.

☐ B. The Property will be sold absolute.

2. ***Sale Prior to Auction (check only one)***

☒ A. Property is subject to sale or exchange prior to auction.

☐ B. Property is <u>not</u> subject to sale or exchange prior to auction.

3. ***Commission***

The Auction Company shall receive compensation for its services described in this Agreement (the "Commission"). In the event of a successful bidder (the "Buyer"), the Commission shall be an amount equal to ten percent (10%) of the Final Bid Price (the "Buyer's Premium"). The Buyer's Premium shall be paid by Buyer in cash or immediately available funds at closing. If Buyer is registered to bid at the auction by an agent of Buyer, said agent shall receive 3% of the Buyer's Premium at the time of closing.

In the event the Property is subject to sale or exchange by Seller prior to auction, any sale or exchange of the Property which is entered into by Seller during the Listing Term shall entitle Auction Company to Commission from Buyer in an amount equal to ten percent (10%) of the sale or exchange price of the Property (the "Buyer's Commission"). Said Commission which shall be paid at the time of closing of the sale or exchange transaction, in cash or immediately available funds. If Buyer is unwilling to pay the full Buyer's Commission, Seller agrees to pay the balance of the Buyer's Commission, in cash or immediately available funds at time of closing.

4. ***Advertising & Promotion Budget***

Seller agrees to put on deposit with Auction Company a marketing fee of $3,000.00 (the "Marketing Fee") upon execution of this Agreement. The Marketing Fee shall be applied toward the cost of marketing and advertising expenses for the Property. These expenses shall include, but not be limited to, the following: signage, ads, auction flyers, and postage, etc.

Seller shall have an opportunity to review and approve all marketing and advertising materials prior to distribution and/or publication. Auction Company will provide Seller with an accounting of Marketing Fee expenditures. If any of the Marketing Fees remain unused following the final accounting of the auction, Seller's unused funds shall be refunded to Seller.

5. Equal Opportunity

The Property will be offered for sale to qualified bidders regardless of their race, color, sex, marital status, religion, or national origin.

6. Auction Method

The auction will be conducted online only and will be hosted on the Auction Company's website and auction platform.

7. Auction Date & Time

To be determined.

8. Earnest Money

The successful bidder, as Buyer, shall be required to deposit, as earnest money, an amount equal to ten percent (10%) of the total of the combined amount of the Final Bid Price and of the Buyer's Premium. Checks will be made payable to, and held in escrow by, a title insurance company to be named.

9. Property Condition and Conveyance

The Property will be conveyed, "As Is, Where Is", with no Seller representation or warranty whatsoever, and by "Special Warranty Deed."

Auction Company will urge all bidders to inspect the Property before the day of auction.

There shall be no contingencies to Buyer's obligation to close. At the conclusion of the auction, the successful bidder shall sign, as Buyer, a Real Estate Purchase Agreement (the "REPA"), in the form acceptable to and approved by Seller in advance, unless edits to the REPA are requested by Buyer and agreed to buy Seller. The Auction Company shall make the REPA available to all interested parties prior to the auction.

10. Closing Date

Thirty (30) days from the full execution of the Real Estate Purchase Agreement.

11. Title Insurance/Closing Costs

The Seller does hereby authorize Auction Company to secure a title commitment binder on its behalf for the Property at Seller's expense (to be collected from Seller's proceeds at closing) from title insurance company to be named. A copy of the commitment shall be provided to all interested parties prior to auction. Seller and

Buyer shall each pay all its own expenses incurred in connection with the sale/purchase of the Property, including, without limitation, all of their respective accounting, legal and appraisal fees. The Seller and Buyer, in addition to their other expenses, shall each pay fifty percent (50%) of the cost of (1) charges incident to the recording of the deed, (2) premiums for any coverage under Buyer's title insurance policy, (3) fees, costs and expenses of Escrow Agent.

12. Taxes

All prior year's taxes to be paid by Seller. 2022 taxes to be prorated to date of closing.

13. Insurance

Seller hereby agrees to carry liability or similar insurance on the Property effective through the date of closing.

14. Pre-Auction Activities Performed by J.P. Weigand & Sons, Inc.

1) Gather all pertinent information on the Property.
2) Place commercial size signs with riders describing auction date and time.
3) Advertising will also suggest private showings by appointment.
4) Arrange and attend private showings if applicable.
5) Order preliminary title from a local title insurance company.
6) Implement the marketing plan.

15. Photo Authorization

Seller authorizes Auction Company to publish images and data related to the Property on public web sites.

16. Direct Mail (if applicable)

Auction Company will introduce the Property through direct mail to its identified targeted groups. The mailings will be issued by way of bulk mail at least two weeks prior to the auction.

17. Media (Number of publications varies with project).

Auction Company will devise a marketing plan to advertise the Property in appropriate publications.

18. Signage

Auction Company will place auction signs on the Property indicating the day and time of the auction.

19. Co-op Broker

Brochures will be sent to other brokers in the market and surrounding markets of the Property and followed up with personal calls.

20. Auction Procedures

Kevin Howell, auctioneer with J.P. Weigand & Sons, Inc., (the "Auctioneer") will serve as the principal Auctioneer.

Any announcement made by Auctioneer takes precedence over any printed material. Information in the brochure is from sources believed reliable, but no warranty or representation is made as to its accuracy by Auction Company. Any information on this auction is subject to verification. No liability for errors, omissions, or changes is assumed by Auction Company.

Upon conclusion of the bidding, the successful bidder, as Buyer, as noted above, will execute the prepared Real Estate Purchase Agreement (the "REPA") and make the stated earnest money deposit, unless edits to the REPA are requested by Buyer and agreed to buy Seller. The second high bidder shall be offered the opportunity to sign a second high bidder form that will allow them to have the right to purchase the Property in the event that the successful bidder does not close.

Auction Company will work closely with the title insurance company and Seller's attorneys and others to insure a smooth closing.

21. Auction Day Activities

One hour prior to the auction, Auction Company will have representatives present to answer any questions not answered at the open-for-inspections. Auction Company will provide appropriate staffing on the day of the auction. If applicable to the auction type, Auction Company will make sure adequate seating and refreshments are available at the auction site, as conditions allow. Upon conclusion of the bidding, the successful bidder, as Buyer, as noted above, will execute the prepared Real Estate Purchase Agreement (the "REPA") and make the stated earnest money deposit, unless edits to the REPA are requested by Buyer and agreed to buy Seller. The second high bidder shall be offered the opportunity to sign a second high bidder form that will allow them to have the right to purchase the Property in the event that the successful bidder does not close.

22. Post Auction Activities

Auction Company will work closely with the title insurance company and Seller's attorneys and others to insure a smooth closing.

23. Broker Participation

Seller agrees that Broker shall:

Yes	No	
☒	☐	Offer cooperation to transaction brokers
☒	☐	Offer cooperation to buyer's agents
☒	☐	Offer compensation to transaction brokers
☒	☐	Offer compensation to buyer's agents

24. Agency Disclosure

A designated agent is a real estate licensee affiliated with a broker who has been designated by the broker, or the broker's duly authorized representative, to act as the agent of a broker's buyer or seller client to the exclusion of all other affiliated licensees. If a designated agent is appointed to represent Seller, Seller understands:

1. The designated agent will perform all of the duties of a Seller's agent and will be Seller's legal agent to the exclusion of all other licensees of the Broker.
2. Another licensee of Broker may act as a designated agent for the buyer in the sale of Seller's Property.
3. The supervising broker (or branch broker, if applicable) will act as a transaction broker, and may advise and assist the designated agent for the Seller and the designated agent for the buyer but will not advocate for the interests of either party and will not, without prior consent of both parties, disclose any information or personal confidences about a party which might place the other party at an advantage. The supervising broker (or branch broker, if applicable) may appoint an affiliated licensee to act in the transaction as a transaction broker.
4. If the designated agent for the Seller is also the designated agent of a buyer who is interested in Seller's Property, the designated agent cannot represent both Seller and buyer. With the informed consent of both buyer and Seller, the designated agent may act as a transaction broker and assist the parties with the real estate transaction without being an agent or advocate for the interests of either party.
5. If a buyer client of a designated agent wants to see the Property, Broker, with the written consent of Seller, may specifically designate an affiliated licensee who will act as a designated agent for Seller.

Yes No

☒ ☐ Seller consents to designated agent relationship, and Broker, or Broker's authorized representative, now designates Kevin Howell to act as designated agent on Seller’s behalf.

☒ ☐ Seller consents to the above-named designated agents acting as a transaction broker in the event he is also the designated agent for a registered bidder, subject to both registered bidder and Seller signing a Transaction Broker Addendum to their agency agreement with Broker/Auction Company, which must be signed by the registered bidder, prior to the auction of the Property, and signed by Seller prior to acceptance of registered bidder’s offer.

25. Exclusive Right to Sell

Seller hereby engages Auction Company for the purpose of locating prospective bidders for the Property through the auction marketing method and assisting Seller in negotiating contracts for sale of the Property. Seller agrees to use Auction Company exclusively for such purposes and will not, during the “Listing Term” (hereafter defined), employ or engage any other company, person, or entity to perform the same or similar services. All prospective bidders now known to Seller or hereafter coming to the knowledge of Seller during the Listing Term shall be referred to Auction Company.

26. Listing Term and Protected Period

The Listing Term shall commence on the date this Agreement is signed by Seller and end six (6) months after the date of the auction. On or before six (6) months after the date of the auction, Auction Company shall submit to Seller a written list of parties with whom Auction Company was in good faith negotiating a sale or exchange of the Property. The names included on the list shall be subject to Seller’s acceptance and reasonable approval. If a sale or exchange of the Property to an identified party is consummated (i.e., a sale on terms and conditions acceptable to Seller in its sole discretion) on or before six (6) months after the date of the auction, then such sale or exchange shall be deemed to have taken place during the term of this Agreement with respect to Auction Company's right to receive a Buyer's Commission based on the sale or exchange price. In the event Buyer is unwilling to pay any or all of the Buyer's Commission, Seller agrees to pay the balance of the Buyer's Commission, in cash or immediately available funds at time of closing. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

27. Expert Advice

Broker advises Seller to obtain expert advice as to matters about which Broker knows, but the specifics of which are beyond the expertise of the Broker. These matters include, among other things, advice relating to law, tax, financing, surveying, structural condition (including condition of roof, walls, and basement), hazardous materials, environmental consultants, environmental condition of the Property, engineering, electrical items, plumbing, drainage, and other specialized areas.

28. Seller's Disclosure

Seller agrees to disclose to Broker all information relating to conditions that may affect the sale of the Property including, but not limited to, those outlined on any Seller's Property Information Statement signed by Seller.

29. Signature by electronic mail and in counterpart, agreement to use electronic signatures

Signatures to this Agreement may be transmitted by electronic mail (such as a PDF) and signed in counterpart, on separate pages, which may then be assembled as the completed agreement of the parties. In addition, Buyer and Seller agree this transaction may be conducted through electronic means in accordance with the Kansas Uniform Electronic Transactions Act.

30. Additional Provisions

None.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year last written below.

AUCTION COMPANY/BROKER:

J. P. WEIGAND & SONS, INC.
a Kansas corporation

DocuSigned by:
By: Kevin Howell
76AED25A4E4E47C...
Kevin Howell
Date: 7/27/2022

SELLER:

SARAH D. DIAMOND
JEREMY DICK

DocuSigned by:
By: SARAH D. DIAMOND
74B20FDBA6934E6...
Sarah D. Diamond
Date: 7/27/2022

DocuSigned by:
By: Jeremy Dick
5FF2D4CDE3E9456...
Jeremy Dick
Date: 7/27/2022

EXHIBIT "A"
(general depiction of Property)