



**RESOLUTION NO. 20190723-01**

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR/CEO TO ENTER INTO A NON-EXCLUSIVE LISTING AGREEMENT WITH SCHIMMING COMPANY COMMERCIAL REAL ESTATE SERVICES**

**WHEREAS**, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

**WHEREAS**, it is the desire of the TexAmericas Center Board of Directors to engage local real estate professionals in the process of economic redevelopment and real estate sales and marketing of TexAmericas Center-owned property; and

**WHEREAS**, local real estate professionals were invited to tour the TexAmericas Center facility, offer input on the marketing of the property and expressed interest in participating in marketing activities; and

**WHEREAS**, the dialogue with the local real estate professionals and TexAmericas Center staff produced a consensus agreement for non-exclusive marketing and sales support (attached);

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of TexAmericas Center that the Executive Director/CEO shall be and he is hereby authorized to execute the attached agreement with Schimming Company Commercial Real Estate Services.

**PASSED and APPROVED** this 23<sup>rd</sup> day of July, 2019.

  
\_\_\_\_\_  
**Jim Roberts, Vice-Chairman of the Board**

**ATTEST:**

  
\_\_\_\_\_  
**Ben King, Secretary**

Attached: Non-Exclusive Listing Agreement



**NON-EXCLUSIVE  
LISTING AGREEMENT  
FOR SALE OR LEASE**

**Date:** July 9, 2019

**Owner:** TexAmericas Center, a political subdivision of the State of Texas

**Owner's Mailing Address, Telephone, Facsimile Numbers and Email Address:**

TexAmericas Center  
107 Chapel Lane  
New Boston, Texas 75570  
Telephone: 903-223-9841  
Facsimile: 903-223-8742  
Eric.Voyles@TexAmericasCenter.com

**Broker:** Landon Huffer

**Broker's Mailing Address, Telephone, Facsimile Numbers and Email Address:**

Schimming Company Real Estate Services  
6004 Summerfield Drive, Ste. B  
Texarkana, TX 75503  
Telephone: 903-794-3606  
Facsimile: 903-793-1309  
[landon@schimmingcompany.com](mailto:landon@schimmingcompany.com)

**Property:** All real property owned by Owner in Bowie County, Texas, as shown as available for sale or lease upon the website of Owner at [www.texamericascenter.com](http://www.texamericascenter.com), or represented by Owner to Broker in writing as available for sale or lease on the Commencement Date. The amount of, and location of, Property subject to this Agreement shall change upon sales and/or leases of property by Owner subsequent to the date of this Agreement.

**Commencement Date:** March 1, 2019

**Term:** One (1) year, with two (2) possible one (1) year extensions.

**Broker's Fee:** See Section 4 of this Agreement.

## Agreement

In consideration of services to be performed by Broker, Owner appoints Broker as Owner's nonexclusive agent to sell and/or lease the Property for a price and on the terms acceptable to Owner, it being understood and agreed that Owner reserves the right to sell, exchange, lease, or otherwise dispose of the Property to a buyer or lessee procured by Owner or another broker without the assistance of Broker.

1. Agreement and Term. This agreement will commence on the Commencement Date and will continue for a term of one (1) year that will expire at 11:59 P.M. local time on the last day of the Term. However, if there is a pending contract in effect on the Termination Date between Owner and a buyer/lessee procured by Broker and that transaction has not been closed and funded, this agreement will continue in effect beyond the Termination Date solely with respect to that contract until the earlier of the closing and funding of the transaction described in the contract or the termination of the contract in a manner permitted in the contract. The term of this agreement is subject to early termination as provided in Section 9 of this agreement. By mutual written agreement of Broker and the Executive Director of Owner, this agreement may be extended for two additional terms of one (1) year each.

2. Listing Price and Terms. Owner agrees to sell the Property at a price that Owner may accept in its sole discretion. Unless otherwise agreed by Owner, the Property will be sold for cash, and Owner will not provide any financing with respect to the sale. Owner will pay the typical transaction and closing costs borne by or charged to Owners of real property in Bowie County, Texas.

3. Exclusive Agency Relationship. Unless otherwise specified by written agreement between Seller and Broker, it is understood and agreed that Broker will act solely as Seller's agent in connection with the sale of the Property and that Broker is not authorized to act as an intermediary between Seller and any buyer of the Property.

4. Broker's Fee. The terms under which Broker shall be compensated shall be governed by the following provisions:

- a. The Broker's Fee will be earned when the sale or lease of the Property to a buyer or lessee procured by Broker, individually or in cooperation with another broker, under a contract executed by Owner is finally closed and funded, whether this occurs during the term of this agreement or after the termination of this agreement. In the event a lease is executed by Owner with a Lessee procured by Broker and the Lease contains one or more options to extend the Lease, Broker's commission for each exercised option term shall be earned upon exercise of the option and payment of the first month's rent due for the extended term. Renewal or extensions of leases by Owner which are not provided for in the original lease procured by Broker shall not result in a commission to Broker unless specifically

approved by Owner in writing. The term "procured by Broker" means that the Broker submitted a written proposal from the buyer/lessee to Owner (or, the Broker submitted to Owner a request for Proposal based upon the buyer/lessee's written site characteristics or requirements) which ultimately resulted in a written contract between the buyer/lessee and Owner during the term or the Protection Period.

- b. Unless otherwise provided in this agreement, the Broker's Fee will be determined on the basis of the sale price (the "Sale Price") or aggregate base lease rentals specified in the contract between Owner and the buyer. If the transfer or lease of the Property is by a no-cost economic development incentive transfer or lease by Owner, no commission shall be paid by Owner to Broker, which may collect a commission from the Purchaser, or Lessee.
- c. If a buyer procured by Broker with whom Owner has entered into a contract for the sale of the Property during the term of this agreement breaches that contract and Owner receives the buyer's earnest money or a portion thereof as liquidated damages, Owner will pay Broker the lesser of one-half of the amount of the liquidated damages or the Broker's Fee.
- d. If litigation, mediation, or arbitration is instituted with respect to a contract between Owner and a buyer procured by Broker for the sale of the Property that is executed during the term of this agreement, and Owner collects all or a portion of the Sale Price or damages by judgment, compromise, settlement, or otherwise, Owner will pay Broker the lesser of (i) one-half of the amount collected after deduction of attorney's fees and other expenses of collection or (ii) the Broker's Fee (determined after reducing the Sale Price by the amount of attorney's fees or other expenses of collection).
- e. Owner will not owe Broker the Broker's Fee if a sale or lease of the Property does not close or fund.
- f. Owner will not owe Broker a Broker's Fee in connection with any transaction in which the buyer or other party to the transaction was procured by Owner directly or procured by another broker.
- g. The Broker's fee shall be determined and paid based upon the sales or lease price as follows:
  - (1) For Sales, Six Percent (6%) of the first \$1,000,000.00 of the sales price, and Three percent (3%) of the amount over \$1,000,000.00.
  - (2) Broker's fee for Sales shall be paid at Closing of the Sale.
  - (3) For Leases, Four Percent (4%) of base aggregate rent (excluding

common area maintenance, taxes, insurance, and Owner paid leasehold improvements amortized over the term of the Lease as rent) for the primary term, up to \$25,000.00 in commissions and thereafter Two Percent (2%), including any extended or option terms (as stated in Section 4.a. above).

- (4) Broker's fee for Leases shall be paid as follows:
- (a) upon execution of the Lease, payment of the first month's rent, and when lessee has paid to Owner all deposits as required by the Lease Agreement, Broker shall be paid the fee based upon the aggregate rent payable during the first year of the lease term;
  - (b) thereafter, Broker shall be paid the fee for each subsequent year's aggregate rent on the later of the anniversary date of the lease or receipt of an invoice from Broker.
- h. In the event that Broker and an outside broker each claim entitlement to a Broker's Fee for the sale or lease of Owner's property, or a portion thereof, (including but not limited to claims arising due to or during the Protection Period), Broker, Owner and the outside broker shall attempt to mediate or otherwise amicably resolve said dispute or conflicting claims without resorting to litigation. In the event said dispute or conflicting claims are not resolved within ninety (90) days after the end of the Protection Period, Owner may interplead an amount equal to the Broker's Fee if paid only to a single Broker into the registry of the District Court of Bowie County, Texas, pursuant to applicable Texas Statutes. Under no circumstances shall Owner be responsible for paying two Broker's Fees for the sale or lease of a single tract of Owner's property. The term "outside broker" shall mean any broker or sales person other than Broker.

5. Protection Period. Subject to the conditions set forth in paragraph 4. above, if, within ninety (90) days after the termination of this agreement (the "Protection Period"), Owner enters into a contract to sell or lease the Property to a buyer or lessee registered by Broker, Owner will pay Broker the Broker's Fee as provided in Section 4.g..

- a. For purposes of this Section 5, the Broker's Registered Buyers or Lessees will consist only of those persons registered by Broker in writing to Owner within ten (10) days after termination of this Agreement.
- b. Broker may only register with Owner, those individuals and entities with whom Broker has actually negotiated the sale, exchange, or lease of the Property or a part thereof during the term of this Agreement. For example, Broker may not register individuals or entities to whom Broker has only supplied information regarding the property by written

advertisement, emails, texts, data compilations of potential buyers/lessees or on-line listings, but with whom Broker has not actually negotiated the terms of a proposal regarding the Property or part thereof.

- c. It is specifically understood and agreed, however, that the foregoing provisions regarding the Protection Period will not be applicable with respect to any sale, exchange, lease, or other transfer of the Property that occurs after the termination of this agreement where Owner is obligated to pay a Broker's fee to another realtor or Broker.

6. *Broker's Duties and Authorities.* During the term of this agreement, Broker will be authorized and required to take the following actions:

- a. Broker will make reasonable efforts and act diligently to sell or lease the Property in accordance with the terms of this agreement. Owner authorizes Broker and Broker's associates, at Broker's sole cost and expense, to (i) advertise the Property by the means and methods Broker reasonably determines to be appropriate for the Property based on then-current market practices for properties substantially similar to the Property; (ii) furnish comparative marketing and sale information about other properties to prospective buyers; (iii) disseminate information about the Property to other brokers and their associates through a multiple-listing service or such other means as Broker reasonably determines to be appropriate; (iv) enter the Property, and accompany other brokers and their associates who wish to enter the Property, at reasonable times on reasonable advance notice, and coordination with Owner to show the Property to prospective buyers or lessees, and; (v) authorize property inspectors, appraisers, and repair personnel to enter the Property at reasonable times on reasonable notice and coordination with Owner for pertinent purposes.
- b. Broker is not authorized to (i) execute any document in the name of or on behalf of Owner with respect to the Property, (ii) authorize any repairs to the Property without Owner's prior written consent, (iii) authorize the expenditure of any funds on behalf of Owner without Owner's prior written consent, (iv) negotiate any earnest money deposit or other instrument in connection with the Property, (v) use a "lock-box" for keys to the Property, or (vi) place any "For Sale" signs on the Property or remove other signs offering the Property for sale or lease without Owner's prior written consent.
- c. Broker will not be obligated to market the Property after Owner has entered into a binding contract unless the contract provides otherwise. If Broker is obligated to submit subsequent or backup offers, Owner will specifically provide in the contract for the sale of the Property with a buyer that Owner may continue to market the Property so that Broker may receive subsequent or backup offers, which will be submitted to Owner as

received for consideration by Owner when the prior contract is terminated or renegotiated. If Owner enters into a contract to sell the Property that does not provide for the submission of backup offers, and Broker subsequently receives a subsequent or backup offer to purchase the Property, Broker will inform Owner and submit the subsequent or backup offer to Owner when the prior contract is terminated or renegotiated.

- d. Broker will not be responsible in any manner for personal injury to Owner resulting from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing water pipes, or other causes, except the negligence or misconduct of Broker. Broker will not be responsible for the security of the Property or for inspecting the Property on any periodic basis unless otherwise agreed in writing by Owner and Broker.

7. Broker's Representations and Covenants. Broker represents and warrants to, and covenants with, Owner as follows:

- a. Broker is duly licensed as a real estate broker authorized to provide real estate brokerage services in accordance with this agreement by the Texas Real Estate Commission (the "Commission") under the Texas Real Estate License Act (the "Act"), as amended, and will maintain that license in full force and effect at all times during the term of this agreement. All associates employed by Broker to assist with marketing and selling the Property, and all other brokers with whom Broker cooperates in connection with marketing and selling the Property, will be duly licensed by the Commission as real estate brokers or agents in accordance with the Act when any such services are rendered.
- b. All activities by Broker and Broker's associates hereunder will be conducted in strict compliance with the Act, the rules and regulations of the Commission, and all other provisions of applicable law, including, without limitation, all fair housing laws.

8. Owner's Representations and Covenants. Owner represents and warrants to, and covenants with, Broker as follows:

- a. Owner represents that (i) Owner has fee simple title to the Property, peaceable possession of the Property and all improvements and fixtures on the Property unless rented, and the legal capacity to convey the Property; (ii) no person or entity has any right to purchase, lease, or acquire the Property by virtue of a contract, option, right of first refusal, or other agreement; (iii) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property; (iv) the Property is not subject to the jurisdiction of any court whose permission or consent is required for the execution of this agreement or the sale, exchange, or other

disposition of the Property; and (v) all information regarding the Property that has been provided by Owner to Broker, or that may be provided by Owner to Broker after the execution of this agreement, has been or will be, to the best of Owner's knowledge, true, correct, and complete in all material respects.

- b. Owner will cooperate fully and in good faith with Broker to facilitate the showing and marketing of the Property at Broker's sole cost and expense.

9. Termination. Either party is entitled to terminate this agreement before the Termination Date if the other party fails to perform its obligations under the agreement and the failure to perform is not cured to the reasonable satisfaction of the party giving written notice of such failure within (30) thirty days after receipt of the notice. Either party is also entitled to terminate this agreement without cause upon sixty (60) days notice to the other party. Except for a termination due to Broker's failure to be licensed under the Act, any such termination will not be effective with respect to any contract for the sale, exchange, lease, or other disposition of the Property previously executed by Owner and a buyer or lessee that is then pending closing.

10. Attorney's Fees. If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

11. Binding Effect. This agreement binds, benefits, and may be enforced by the successors in interest to the parties.

12. Choice of Law. This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Property is located.

13. Counterparts. This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

14. Waiver of Default. It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

15. Further Assurances. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

16. Indemnity. Broker agrees to indemnify, defend, and hold harmless Owner from any loss, attorney's fees, expenses or claims arising out of the performance or non-performance by Broker of its rights and obligations under this Agreement.



17. Entire Agreement. This agreement is the entire agreement of the parties. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement.

18. Legal Construction. If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. The agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

19. Notices. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

20. Recitals. Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

21. Time. Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

22. Owner's Reserved Rights. Owner reserves the right to sell, lease, and/or renew and extend leases, without a commission being due to Broker, with Owner's current tenants and with persons and or entities who have or may in the future deal directly with Owner, or other brokers who may have a listing on the Property, without the participation of Broker.

23. Governmental Immunity. By execution of this Agreement, TexAmericas Center does not waive its governmental immunity except to the extent it is contractually liable for the amount due under this Agreement. Damages in a suit to enforce this Agreement shall not include consequential damages, or exemplary damages of any kind. This limited waiver of governmental immunity shall not extend to, or for the benefit of, any third parties.

24. Commitment of Current Revenue. TexAmericas Center retains the right to terminate this contract at the expiration of each budget year (September 30 of each year) occurring during the term of this contract. TexAmericas Center executes this contract conditioned on the fact that it shall use its best efforts to obtain and appropriate funds during

each budget year for payment of the sums payable by TexAmericas Center under this contract. This contract is a commitment of current revenues only.

TEXAMERICAS CENTER  
OWNER

By: William Scott Norton  
William Scott Norton,  
Executive Director, CEO

Date: 7/23/19

SCHIMMING COMPANY REAL ESTATE SERVICES  
BROKER

By: [Signature]  
Name: London Hutter  
Title: Executive Broker

Date: 7/16/19