

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: §  
BALLENGER CONSTRUCTION CO. § CASE NO. 12-20645  
Debtor §

**MOTION AND NOTICE OF TRUSTEE’S INTENT TO SELL  
PROPERTY FREE AND CLEAR OF LIENS CLAIMS AND INTERESTS**

**This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.**

**There will be a hearing on this motion on \_\_\_\_\_ at \_\_\_\_\_ o'clock in courtroom \_\_\_\_\_.**

To All Parties in Interest:

Please take notice that Michael B. Schmidt, the Liquidating Trustee under the confirmed plan in the above referenced Case (“Trustee”) hereby moves this court for authority to sell the Property hereafter described in Cameron County, Texas for the total sum of \$35,000.00 to Jesus H. Salinas, 4009 Orchid Ave., McAllen, TX 78504, as follows:

A tract of land consisting of 2.83 acres (+/-), out of Lot 6, Section 65, GULF COAST IRRIGATION COMPANY’S SUBDIVISION, Willacy County, Texas, according to map thereof recorded in Volume 1, Page 490 transcribed records from Cameron County, Texas to Willacy County, Texas.

The Trustee pursuant to 11 U.S.C. §363 intends to sell the Trust’s interest in the Property to Buyer, free and clear of all liens, claims and interests for the total cash sum of \$35,000.00, AS IS, WHERE IS and WITH ALL FAULTS in accordance with the terms and provisions of the Contract attached hereto and incorporated herein as **Exhibit 1**. To the extent valid, all liens, claims and interest shall attach to the proceeds of the sale. Further, the Trustee intends to sell the Property to Buyer, free and clear of the liens, claims and interests of as set forth in **Schedule ‘C’** attached to the Order including, but not limited to, those of Frost National Bank. All liens, claims and interests shall attach to the proceeds, to the extent valid. The Trustee is simultaneously paying the \$176.00 filing fee for this Motion. The Trustee moves the Court to waive the stay provided under FRBP 6004(h).

The sale is being made in good faith, to a third party unaffiliated buyer, as the result of an arms-length transaction. The sale of this property will benefit the estate in that the net funds received will be used to pay down the lien of Frost, unpaid taxes and closing costs. The Trustee and the estate retain all rights under 506 (c) of the Code. Trustee believes that the sales price is the best price obtainable.

The Trustee requests, at his discretion, upon his review and verification of any valid liens, the Court authorizes him to pay all such liens and broker fees and closing costs, including attorney documentation fees from the proceeds of the sale or have such liens and fees (or any portion thereof) withheld and paid by the title company at closing. The Property is released from all liens, claims and interests (including, but not limited to those set forth on the **Schedule "C"** attached hereto), and attach to the sales proceeds (to the extent they are valid) upon consummation by the Trustee of this approved sale. Provided, however, the ad valorem tax liens for the 2018 tax year will be expressly retained in the Property until the payment by the purchaser of the 2018 ad valorem taxes. The Trustee also requests he be authorized to execute all necessary documents and take all such further action deemed by him necessary to transfer ownership to Buyer of the Property, without further order of this Court. Further, the Trustee requests such earnest money contract and each of its terms and conditions be approved and become binding upon all Parties upon the execution of this order.

Objections and requests for a hearing before the Bankruptcy Court, if any, as to the above sale and termination of the month to month lease, shall be in writing and filed with the clerk of the Bankruptcy Court and served upon the Trustee at the address shown below. Any objections not timely filed and served may be deemed waived.

WHEREFORE, PREMISES CONSIDERED, Michael B. Schmidt, Trustee prays that this Court enter an Order Approving this Motion to Sell Free and Clear of Liens, claims and interests and for any further relief that he may be justly entitled to.

DATE: October 3, 2018

Law Office of Michael B. Schmidt

/S/MICHAEL B. SCHMIDT  
Michael B. Schmidt,  
401 Grant Pl.  
Corpus Christi, Texas 78411  
TBN 17775200 FBN 10260  
361/884-9949 FAX: 361/884-6000  
Attorney for the Trustee

**CERTIFICATE OF SERVICE**

I do hereby certify that on October 3, 2018, I served a copy of the foregoing motion to the persons listed below and on the service list electronically and/or by regular mail.

/S/MICHAEL B. SCHMIDT  
MICHAEL B. SCHMIDT

IRS  
Centralized Insolvency Operation  
P. O. Box 7346  
Philadelphia, PA 19101

Frost National Bank  
c/o Craig Power, Attorney  
Email: [CPower@cbylaw.com](mailto:CPower@cbylaw.com)  
Cokinos, Bosien & Young  
1221 Lamar, 16<sup>th</sup> Floor  
Houston, TX 77010



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

2-12-18

**UNIMPROVED PROPERTY CONTRACT**

NOTICE: Not For Use For Condominium Transactions



1. **PARTIES:** The parties to this contract are **Michael B. Schmidt, Liquidating Trustee** (Seller) and **Jesus Hector Salinas** (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. **PROPERTY:** Lot **2.83 acs. out of Lot 5**, Block **Section 65**, Addition, **GULF COAST IRRIGATION COMPANY'S SUBDIVISION**, City of **Raymondville**, County of **Willacy**, Texas, known as **2.82 acre tract, US Hwy 77 S**, **78580** (address/zip code), or as described on attached exhibit together with all rights, privileges and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships (the Property). **RESERVATIONS:** Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

3. **SALES PRICE:**  
A. Cash portion of Sales Price payable by Buyer at closing. . . . . \$ **35,000.00**  
B. Sum of all financing described in the attached: Third Party Financing Addendum,  Loan Assumption Addendum,  Seller Financing Addendum. . . . . \$  
C. Sales Price (Sum of A and B) . . . . . \$ **35,000.00**

4. **LICENSE HOLDER DISCLOSURE:** Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: **Not Applicable.**

5. **EARNEST MONEY:** Within **3** days after the Effective Date, Buyer must deliver \$ **2,500.00** as earnest money to **San Jacinto Title Services**, as escrow agent, at **15122 Northwest Blvd., Suite 3, Corpus Christi, Texas 78410** (address). Buyer shall deposit additional earnest money of \$ **-0-** to escrow agent within **-0-** days after the effective date of this contract. If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money. If the last day to deliver the earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. **Time is of the essence for this paragraph.**

6. **TITLE POLICY AND SURVEY:**  
A. **TITLE POLICY:** Seller shall furnish to Buyer at X Seller's Buyer's expense an owner's policy of title insurance (Title Policy) issued by **San Jacinto Title Services** (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:  
(1) Restrictive covenants common to the platted subdivision in which the Property is located.  
(2) The standard printed exception for standby fees, taxes and assessments.  
(3) Liens created as part of the financing described in Paragraph 3.  
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.  
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.  
(6) The standard printed exception as to marital rights.  
(7) The standard printed exception as to waters, tide lands, beaches, streams, and related matters.  
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:  
 (i) will not be amended or deleted from the title policy; or  
 (ii) will be amended to read, "shortages in area" at the expense of Buyer Seller.  
(9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.  
B. **COMMITMENT:** Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address

SAN JACINTO TITLE SERVICES  
OFF 159719105  
MAY 15 2018

TAR 1607 Initialed for identification by Buyer

and Seller

TREC NO. 9-13

Armando Avalos Realty, Inc. P. O. Box 271029 Corpus Christi, TX 78427

Phone: 1361857-2220

Fax: 1361883-9949

2.83 ac tract, S. US

Armando G. Avalos

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shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

- (1) Within (5) days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at  Seller's  Buyer's expense no later than 3 days prior to Closing Date.
- (2) Within \_\_\_\_\_ days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within \_\_\_\_\_ days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; or disclosed in the Commitment other than items 6A(1) through (9) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity: **agricultural/farm**

Buyer must object the earlier of (i) the Closing Date or (ii) (5) days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or Survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or Survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, Survey, or Exception Document(s) is delivered to Buyer.

E. TITLE NOTICES:

- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- (2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property  is  is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2 in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. **You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.**

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

**If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used.**

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(Address of Property)


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- (3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
  - (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
  - (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
  - (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
  - (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
  - (8) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property  is  is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.
  - (9) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
  - (10) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
  - (11) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

**7. PROPERTY CONDITION:**

- A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.  
**NOTICE:** Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.
- B. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7B (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

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Initialed for identification by Buyer

and Seller 

TREC NO. 9-13

(Check one box only)

- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments:

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs and treatments.)

- C. **COMPLETION OF REPAIRS:** Unless otherwise agreed in writing: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days, if necessary, for Seller to complete repairs and treatments.
- D. **ENVIRONMENTAL MATTERS:** Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- E. **SELLER'S DISCLOSURES:** Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
  - (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
  - (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
  - (3) any environmental hazards that materially and adversely affect the Property;
  - (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
  - (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
  - (6) any threatened or endangered species or their habitat affecting the Property.
- 8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.
- 9. **CLOSING:**
  - A. The closing of the sale will be on or before **November 16**, 2018, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
  - B. At closing:
    - (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
    - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
    - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
    - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
- 10. **POSSESSION:**
  - A. **Buyer's Possession:** Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing and funding.
  - B. **Leases:**
    - (1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.
    - (2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.
- 11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holders from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)  
**See Contract Addendum Attached hereto for special provisions:**

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**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ -0- to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS AND ROLLBACK TAXES:**

A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Assessments are imposed because of Seller's use or change in use of the Property prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.**15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.**18. ESCROW:**

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow

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- agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
- C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
- D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.
19. **REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.
20. **FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.
21. **NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

<p><b>To Buyer</b>                  at: <u>4009 Orchid Ave</u>  <hr/>                 McAllen, Texas 78504  <hr/>                 Phone: <u>(956)227-9709</u>  <hr/>                 Fax: _____  <hr/>                 E-mail: <u>jhsmachinery@gmail.com</u></p>	<p><b>To Seller</b>                  at: <u>401 Grant Place</u>  <hr/>                 Corpus Christi, Texas 78411  <hr/>                 Phone: <u>(361)884-9949</u>  <hr/>                 Fax: <u>(361)884-6000</u>  <hr/>                 E-mail: <u>m_schmid@swbell.net</u></p>
--	--

22. **AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):
- |   |  |
|---|--|
| <p><input type="checkbox"/> Third Party Financing Addendum</p> <p><input type="checkbox"/> Seller Financing Addendum</p> <p><input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association</p> <p><input type="checkbox"/> Buyer's Temporary Residential Lease</p> <p><input type="checkbox"/> Seller's Temporary Residential Lease</p> <p><input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals</p> <p><input type="checkbox"/> Addendum for "Back-Up" Contract</p> <p><input type="checkbox"/> Addendum Concerning Right to Terminate Due to Lender's Appraisal</p> | <p><input type="checkbox"/> Addendum for Coastal Area Property</p> <p><input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum</p> <p><input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway</p> <p><input type="checkbox"/> Addendum for Sale of Other Property by Buyer</p> <p><input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area</p> <p><input checked="" type="checkbox"/> Other (list): <u>Contract Addendum, Trustee's Addendum, Copy of Existing Survey</u></p> |
|---|--|

SAS



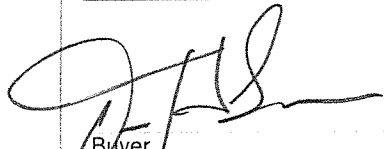
**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ -0- (Option Fee) within 3 days after the Effective Date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within -0- days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**


445  
22

**24. CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is: _____	Seller's Attorney is: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
E-mail: _____	E-mail: _____

EXECUTED the 28<sup>th</sup> day of SEPTEMBER, 2018 (Effective Date).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

  
Buyer  
Jesus Hector Salinas

  
Seller  
Michael B. Schmidt, Liquidating Trustee

Buyer \_\_\_\_\_ Seller \_\_\_\_\_



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 9-13. This form replaces TREC NO. 9-12.

**BROKER INFORMATION**

(Print name(s) only. Do not sign)

Other Broker Firm License No. **ARMANDO AVALOS REALTY, INC.** **0500779**  
 represents  Buyer only as Buyer's agent Listing Broker Firm License No.  
 Seller as Listing Broker's subagent represents  Seller and Buyer as an intermediary  
 Seller only as Seller's agent

Associate's Name License No. **Armando G. Avalos** **128102**  
 Listing Associate's Name License No.

Associate's Email Address Phone **agavalos@armandoavalosrealty.com** **(361)857-2220**  
 Listing Associate's Email Address Phone

Licensed Supervisor of Associate License No. **Armando G. Avalos** **128102**  
 Licensed Supervisor of Listing Associate License No.

Other Broker's Address Phone **P.O. Box 271029** **(361)857-2220**  
 Listing Broker's Office Address Phone

City State Zip **Corpus Christi TX 78427**  
 City State Zip

Selling Associate's Name License No.

Selling Associate's Email Address Phone

Licensed Supervisor of Selling Associate License No.

Selling Associate's Office Address

City State Zip

Listing Broker has agreed to pay Other Broker n/a of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.

**OPTION FEE RECEIPT**

Receipt of \$ \_\_\_\_\_ (Option Fee) in the form of \_\_\_\_\_  
 is acknowledged.

\_\_\_\_\_  
 Seller or Listing Broker Date

**EARNEST MONEY RECEIPT**

Receipt of \$2,500.00 Earnest Money in the form of check #106  
 is acknowledged.

San Jacinto Title Services JenniferSlusher@sanjacintotitle.com  
 Escrow Agent Received by Email Address Date/Time

15122 Northwest Blvd., Suite 3 (361)241-0693  
 Address Phone

Corpus Christi, TX 78410 (361)241-0697  
 City State Zip Fax

**CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

San Jacinto Title Services JenniferSlusher@sanjacintotitle.com  
 Escrow Agent Received by Email Address Date

15122 Northwest Blvd., Suite 3 (361)241-0693  
 Address Phone

Corpus Christi, TX 78410 (361)241-0697  
 City State Zip Fax

**ADDITIONAL EARNEST MONEY RECEIPT**

Receipt of \$ \_\_\_\_\_ additional Earnest Money in the form of \_\_\_\_\_  
 is acknowledged.

\_\_\_\_\_  
 Escrow Agent Received by Email Address Date/Time

\_\_\_\_\_  
 Address Phone

\_\_\_\_\_  
 City State Zip Fax

ADDENDUM

PROPERTY: 2.82 acre tract, US Hwy 77 S, Raymondville, TX 78580

a.) Michael B. Schmidt is the duly appointed Liquidating Trustee for the Bankruptcy Case No. 12-20645, Ballenger Construction Company, Inc., Debtor, United States Bankruptcy Court for the Southern District of Texas - Corpus Christi Division;

b.) Notwithstanding Paragraph 7. PROPERTY CONDITION, the Buyer accepts the property in "as is, where is condition with all faults and specifically and expressly without warranties, representations or guarantees, either expressed or implied, of any kind, nature, or type whatsoever from or on behalf of the seller or seller's agent" and Buyer waives the right to inspection. See Trustee's Addendum attached hereto. In the event of a conflict between the terms and provisions of this earnest money contract and the Trustee's Addendum attached hereto, the terms and provisions of the Trustee's Addendum shall govern, control and prevail;

c.) A Bankruptcy Court Order approving the sale, free and clear of liens, claims and interests shall cure all of objections Buyer may have to any defect or encumbrance to title;

d.) Notwithstanding Paragraph 21. DISPUTE RESOLUTION. Any dispute related to this contract from a party seeking relief from a court of competent jurisdiction shall seek such relief from the Bankruptcy Court for the Southern District of Texas - Corpus Christi Division.

[Multiple horizontal lines for additional text or signatures]

Date: 9/24/18  
[Signature]  
Signature Jesus Hector Salinas

Date: 9/28/18  
[Signature]  
Signature Michael B. Schmidt, Liquidating Trustee

Date: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_  
Signature

Addendum





## TRUSTEE'S ADDENDUM

This is an addendum to the Purchase Agreement ("Contract") attached hereto from Michael B. Schmidt, Liquidating Trustee, Seller;

1. Buyer(s) acknowledges and agrees that Seller holds title to the Property through appointment by the Bankruptcy Court and therefore, Seller sells all that right, title and interest held by the Bankruptcy Estate. Seller has little, if any, knowledge of the physical or economic characteristics of the property. Furthermore, this sale is contingent on Court approval and Buyer(s) acknowledges title to be conveyed by "Special Warranty Deed". Accordingly, except as expressly stated in this Agreement and the warranties of the Deed, Buyer(s) acknowledges and agrees that Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character, whether expressed or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value, nature, quality, quantity, or condition of the Property, including, the water, soil and geology; (b) the income to be derived from the Property; (c) the suitability of the Property for any and all activities and uses which Buyer(s) may conduct thereon; (d) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations or any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property; (f) the manner or quality of the construction or materials, if any, incorporated into the Property; (g) the manner, quality, state of repair or lack of repair of the Property; or (h) any other matter with respect to the Property.

Additionally, except as expressly stated in this Agreement, Seller has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency Regulations at 40 C.F.R., Part 261., or the disposal or existence, in or on the Property, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder; the Resource Conservation and Recovery Act of 1976, as amended, the Texas Water Code, the Texas Solid Waste Disposal Act and the regulations adopted thereunder and/or any other applicable governmental law or authority, or the presence, handling, release, transportation or disposal of any hazardous materials or any other hazardous or toxic substances on, under, around or above the Property, or the Property's compliance or noncompliance with any federal, state or local law, ordinance or regulation relating to the environmental condition of the Property, including, but not limited to, the Endangered Species Act, 16 U.S.C. Section 15341, et seq, and the Clean Water Act, 33 U.S.C. Section 12541, et seq.

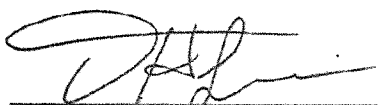
Initialed for identification by Buyer's Initials  Seller's Initials 

Buyer(s) further acknowledges and agrees that having been given the opportunity to inspect the Property, other than the warranties, representations or covenants (if any) in this Agreement and the title warranties in the Deed, Buyer(s) is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller.

2. Buyer(s) further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Except as stated herein, Seller is not liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer further acknowledges and agrees that the maximum extent permitted by law, the sale of the Property as provided for extent herein is made on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis, and Buyer(s) expressly acknowledges that, in consideration of the agreements of Seller, except as stated herein, Seller makes no warranty or representation, expressed or implied, or arising by operation of law, including, but not limited to, any warranty of condition, title (other than the Special Warranty of Title with respect to the land and the improvements), habitability, merchantability or fitness for a particular purpose with respect to the Property or any portion thereof. It is understood and agreed that the purchase price has been adjusted by prior negotiation to reflect that all of the Property being sold by Seller and purchased by Buyer(s) subject to the foregoing. The provisions of this section will survive closing.

BUYER:

SELLER:



Jesus Hector Salinas

Date: 9/28/18



Michael B. Schmidt, Liquidating Trustee

Date: 9/28/18

189710105

**JESUS H SALINAS**  
**LAURA L SALINAS**  
 4009 ORCHID AVE  
 MCALLEN, TX 78504-5307

106  
 35-2/1130 TX  
 17622

9-25-18  
 Date

Pay to the Order of SAU JACINTO Title Services \$ 2,500  
Two thousand five hundred dollars and 00/100 Dollars

**Bank of America**

ACH R/T 111000025

For Repay 2 U:16 property

MP

① Photo Safe Deposit Details on back

① 1130000231



## SCHEDULE C

Commitment No.: 169709131

GF No.: 169709131

Your Policy will not cover loss, costs, attorney's fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
  - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
  - b. all standby fees, taxes, assessments and charges against the property have been paid,
  - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
  - d. there is legal right of access to and from the land,
  - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. Deed of Trust Security Agreement - Financing Statement dated November 19, 2010, filed January 6, 2011, executed by Ballenger Construction Company, a Texas corporation to Jimmy R. Locke, Trustee for the benefit and payable to the order of The Frost National Bank, recorded under Clerk's File No. 2011-0000037, Volume 620, Page 1071, Official Public Records of Willacy County, Texas, secured by a revolving Line of Credit in the principal amount of \$25,000,000.00; and (2) Term Loan in the principal sum of \$5,500,000.00, both of said notes bearing interest as therein specified, containing an attorney's fee clause, and with interest and principal being payable as therein specified; and all indebtedness, obligations and liabilities arising pursuant to the provisions of this Deed of Trust, and the Loan Agreement dated September 15, 2009, as modified by the Modification of Loan Agreement dated August 5, 2010, and the Second Modification of Loan Agreement dated November 19, 2010, (collectively "Loan Agreement"),  
  
Modification, Renewal and Extension dated December 31, 2010, but effective November 9, 2010, executed by Ballenger Construction Company, a Texas corporation to The Frost National Bank, recorded under Clerk's File No. 2011-0000038, Volume 620, Page 1123, Official Public Records of Willacy County, Texas.  
  
Second Modification, Renewal and Extension entered September 15, 2011, executed by Ballenger Construction Company, a Texas corporation to The Frost National Bank, recorded under Clerk's File No. 2011-0002414, Volume 621, Page 2879, Official Public Records of Willacy County, Texas. (NOTE: SUBJECT PROPERTY ADDED AS TRACT 25/ADDITIONAL PROPERTY.)  
  
Release or satisfaction of outstanding liens.

Effective Date: February 7, 2016



## SCHEDULE C

(Continued)

6. Deed of Trust, Security Agreement - Financing Statement effective September 15, 2011, filed December 1, 2011, executed by Ballenger Construction Company, a Texas corporation to Jimmy R. Locke, Trustee for the benefit and payable to the order of The Frost National Bank, recorded under Clerk's File No. 2011-0002415, Official Public Records of Willacy County, Texas, to secure payment of the indebtedness evidence by those certain promissory notes (the "Notes") dated September 15, 2009, incorporated herein by this reference, both executed by Grantor and payable to the order of The Frost national Bank, which definition shall include any holder of the indebtedness), to-wit: (1) Revolving Line of Credit in the principal amount of \$12,000,000.00; and (2) Term Loan in the principal sum of \$5,500,000.00; and the 2011 Term Loan in the principal amount of \$13,000,000.00, all of said notes bearing interest as therein specified, containing an attorney's fee clause, and with interest and principal being payable as therein specified; and all indebtedness, obligations and liabilities arising pursuant to the provisions of this Deed of Trust, and the Loan Agreement dated September 15, 2009, as modified by the Modification of Loan Agreement dated August 5, 2010, and the Second Modification of Loan Agreement dated November 19, 2010, and the Third Modification of Loan Agreement dated September 15, 2011 (collectively "Loan Agreement"),

Release or satisfaction of outstanding liens.

7. UCC Financing Statement filed January 17, 2012, executed by Ballenger Construction Company, a Texas corporation to The Frost National Bank, recorded under Clerk's File No. 2012-0000087, Volume 621, Page 4222, Official Public Records of Willacy County, Texas.

Release or satisfaction of outstanding liens.

8. Regarding Pending Bankruptcy Proceedings on The Estate of BALLENGER CONSTRUCTION COMPANY, Debtor in Case No. 12-20645-Chapter 11, United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, company requires the following:

REQUIREMENT: Need C/C of signed Motion and Approved Order to Sell subject property under search Free and Clear of all Liens by Michael B. Schmidt, Bankruptcy Trustee for The Estate of BALLENGER CONSTRUCTION COMPANY, Debtor in Case No. 12-20645-Chapter 11, United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, under this transaction.

9. REQUIREMENT: Prior to closing this transaction, Company requires a Survey and Field Notes/Metes and Bounds describing the exact boundaries of the property to be insured for examination and approval. The survey must reflect the adjacent owner(s) and dedicated road(s) to subject property road which complies with the General Rules of Procedures and Practices Act RE.663.18, Certification Item #7. This Commitment will be amended upon receipt of the survey and metes and bounds description.

10. We reserve the right to complete Schedule "A" when furnished the (amount or entity) to be insured.

This Commitment is also subject to checking the name(s) of the purchaser(s) for Federal Judgment Liens in favor of the United States; for Chapter 12 or 13 Bankruptcy Proceedings; Texas Workforce Commission Liens; and to see if their name(s) appear(s) on the List of Known or Suspected Terrorist Maintained by the Office of Foreign Asset Control pursuant to the USA Patriot Act.

Effective Date: February 7, 2016

**SCHEDULE C**

(Continued)

11. Company must be furnished a properly executed Affidavit of Debts and Liens executed by the Seller, if a sale or by the Borrower, if a loan only.
12. Company must be furnished with a properly executed waiver of inspection, executed by the purchaser. (Owner Policy Only).
13. Except in an exempt transaction, the Company must be furnished with Seller's Social Security Number or Tax Identification Number and all other information necessary to complete IRS Form 1099-S.
14. Company will require that we be furnished with tax certificates from each taxing unit that assesses the land we are being asked to insure showing all taxes paid for the land plus improvements through 2014.
15. In compliance with Procedural Rule P-2.b. involving residential real property in connection with a Mortgagee Policy issued on a loan to renew, extend or satisfy a lien already covered by a Mortgagee Policy, the company hereby notifies borrower of the borrower's right to substitute a qualifying affidavit in lieu of an updated survey.
16. If the area and boundary exception is to be amended to show only "shortages in area", Company must be furnished with a survey showing a plat and containing the correct description of the subject property made by a Licensed Public Surveyor of the State of Texas, acceptable to this Title Company; or a survey affidavit if the prior survey on subject property is less than six (6) months old, either of which must be reviewed and approved by the issuing office prior to closing.
17. Any matters revealed by current, on the ground as-built survey. NOTE: Company reserves the right to revise this Commitment and to make additional requirements upon receipt of a new survey of the Property.
18. Notice to all buyers, sellers, borrowers, lenders and all parties interested in the transaction covered by this commitment: Effective September 26, 1988, the State Board of Insurance has adopted Procedural Rule P-27 (as amended) which requires that "Good Funds" be received and deposited before a Title Agency may disburse from its trust fund account.  
  
"Good Funds" means:  
  
1. Cash or wire transfers; 2. Certified checks, cashier's checks and teller's checks, as further described in definition "g" of this rule; 3. Uncertified funds in amounts less than \$1,500.00 including checks, traveler's checks, money orders, and negotiable orders of withdrawal, provided multiple items shall not be used to avoid the \$1,500.00 limitation; 4. Uncertified funds in the amounts of \$1,500.00 or more, drafts and any other item when collected by the financial institution; 5. State of Texas warrants; 6. United States Treasury checks; 7. Checks drawn on a bank or savings and loan association insured by the FDIC or FSLIC and for which a transaction code has been issued pursuant to, and in compliance with, such bank or savings and loan association; 8. Checks by City and County Governments located in the State of Texas.
19. Beginning January 1, 2004, all deeds, mortgages, and deeds of trust must include the following Notice on the front page of the document: "NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: Your Social Security Number or your Driver's License."
20. NOTICE: Title Company is unwilling to issue the Title Policy without the mineral exception(s) set out in Schedule B hereof. Optional Endorsements (T19.2 and T19.3) insuring certain risks involving minerals,

Effective Date: February 7, 2016



## SCHEDULE C

(Continued)

and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase-Neither this Policy, nor the optional endorsements, insure that the purchaser has title to the mineral rights related to the surface estate. The promulgated cost for each endorsement is \$50 on an Owners Title Policy and \$0 charge on a Loan Policy.

21. Any lien or liens created in the instruments of conveyance or any security instruments executed in connection with the transaction to be insured will appear as an exception under Schedule B of the policy to be issued and/or as the lien to be insured under Schedule "A" of the Mortgagee Title Policy to be issued, all of which instruments will be subject to the approval of the company and the wording of the exception in the policy to be issued will be based upon the terms of the instruments.
22. The conveyance by sellers must be by a "GENERAL WARRANTY DEED" unless approved by company in advance.
23. CLOSING INSTRUCTIONS AND CLOSING PACKAGE MUST BE RECEIVED IN OUR OFFICE 24 HOURS PRIOR TO CLOSING. IF THIS REQUIREMENT IS NOT MET, SAN JACINTO TITLE SERVICES CANNOT GUARANTEE THE DATE AND TIME OF CLOSING.
24. At closing of this transaction, Title Company must be furnished a copy of the buyers' and/or sellers' official photo identification card.
25. Building, Zoning, Platting and Regulatory Ordinances of the County of Willacy, Texas.
26. The Company may make other requirements or exceptions upon its review of any requested documentation or of the proposed documents creating the estate or interest to be insured or otherwise ascertaining details of the transaction. Company reserves the right to revise this commitment and/or to make additional requirements or corrections at any time prior to the closing of this transaction. Any defect, lien or other matters that may affect title to the land or interest insured, that arises or is filed after the effective date of this commitment.NOTE: This file must be updated within 24 hours prior to Closing.

Effective Date: February 7, 2016

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: §  
BALLENGER CONSTRUCTION CO. § CASE NO. 12-20645  
Debtor §

**NOTICE TO CREDITORS AND PARTIES IN INTEREST**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.

There will be a hearing on this motion on \_\_\_\_\_ at \_\_\_\_\_ o'clock in courtroom \_\_\_\_\_.

Please take notice that on the date written below, Michael B. Schmidt, Liquidating Trustee for the above bankruptcy estate, filed his Motion and Notice of Trustee's Intent to Sell Property Free and Clear of Liens, Claims and Interests. Said Motion and Notice is on file with the United States Bankruptcy Clerk, and may be reviewed during regular business hours. By said Motion and Notice, a request is made for the Court to approve Trustee's Motion filed this date. The property is to be sold to Jesus H. Salinas for a sales price of \$35,000.00 and is described as: A tract of land consisting of 2.83 acres (+/-), out of Lot 6, Section 65, GULF COAST IRRIGATION COMPANY'S SUBDIVISION, Willacy County, Texas, according to map thereof recorded in Volume 1, Page 490 transcribed records from Cameron County, Texas to Willacy County, Texas.

All requests for hearing must be in writing, filed with the Bankruptcy Clerk, 1133 N. Shoreline, 2<sup>nd</sup> Floor, Corpus Christi, TX 78401 and a copy served on counsel for the Trustee.

Dated: October 3, 2018

By:/S/MICHAEL B. SCHMIDT  
Michael B. Schmidt TBN: 17775200  
401 Grant Pl.  
Corpus Christi, Texas 78411  
361/884-9949 FAX: 361/884-6000



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: §  
BALLENGER CONSTRUCTION CO. § CASE NO. 12-20645  
Debtor §

**ORDER AUTHORIZING SALE FREE AND  
CLEAR OF LIENS, CLAIMS AND INTERESTS**

Came on to be heard Michael B. Schmidt, Trustee’s Motion and Notice (“Motion”) to sell to Jesus H. Salinas, 4009 Orchid Ave., McAllen, TX 78504 (“Buyer”) all of the Trust’s interest in certain Property in Cameron County, Texas, as follows:

A tract of land consisting of 2.83 acres (+/-), out of Lot 6, Section 65, GULF COAST IRRIGATION COMPANY’S SUBDIVISION, Willacy County, Texas, according to map thereof recorded in Volume 1, Page 490 transcribed records from Cameron County, Texas to Willacy County, Texas.

This sale is AS IS AND WITH ALL FAULTS and shall be free of liens, claims and interests by Trustee. Further the Court finds this sale shall be free and clear of the interests of Frost National Bank as set forth in **Schedule ‘C’** attached to this Order. The Court having heard the evidence and argument of counsel is of the opinion that such Motion should be granted, the Court is of the opinion that the relief requested is necessary and proper and is in the best interest of the estate and the creditors.

And, THEREFORE:

IT IS ORDERED that Trustee shall sell to Buyer, all of the Trust’s interest in the Property in Cameron County, Texas, for \$35,000.00 The sale shall be made free and clear of any and all liens, claims interest in such interest, but that any liens, claims and interests shall attach to the proceeds received by the Trustee for such sale, to the extent same are valid. This sale is made and accepted AS IS, WHERE IS and WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS OF ANY KIND.

IT IS FURTHER ORDERED that this sale shall be free and clear of any and all liens, claims and interest in such Property, including, but not limited to the lien, claim or interest (if any) of: Frost National Bank, any state or federal taxing district or agency; and any other party of record; that any liens, claims and interests shall attach to the proceeds received by the Trustee for such sale to the extent same are valid.

IT IS FURTHER ORDERED that the Trustee shall pay the filing fee for this Motion of \$176.00.

IT IS FURTHER ORDERED that the Trustee, at his discretion, upon his review and verification of all valid liens is authorized to pay all such liens, specifically including payment to Frost National Bank at closing and funding as directed above, as well as broker fees and other closing costs, including attorney documentation fees, from the proceeds of the sale or have such

liens and fees (or any portion thereof) withheld and paid by the title company at closing. The title company closing this sale shall follow and comply with the Trustee's written instructions to them on the amounts of and to whom distributions of the proceeds of this authorized sale shall be made. The Property is released from all liens, claims and interest (including, but not limited to those set forth on the **Schedule "C"** attached hereto) and attach to the sales proceeds (to the extent they are valid) upon closing and funding of this approved sale. Provided, however, the ad valorem tax liens for the 2018 tax year are hereby expressly retained in the Property until the payment by the Buyer of the 2018 ad valorem taxes. The Trustee is authorized to execute all necessary documents and take all such further action deemed by him necessary to transfer ownership to Buyer of the Property, without further order of this Court. Further, the Contract attached to the Motion and each of its respective terms and conditions are hereby APPROVED and shall become BINDING upon all Parties upon the execution of this order.

IT IS FURTHER ORDERED THAT The Trustee is authorized to take such further and other actions, including the execution of further documents, as may be necessary to transfer to Buyer the Trust's interest in the Property, and to fully accomplish the purposes of this Order.

The Stay provided under FRBP 6004(h) is waived. The Trustee and the estate retain all rights under 506 (c) of the Code.

Dated

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David R. Jones  
United States Bankruptcy Judge

## SCHEDULE C

Commitment No.: 169709131

GF No.: 169709131

Your Policy will not cover loss, costs, attorney's fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
  - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
  - b. all standby fees, taxes, assessments and charges against the property have been paid,
  - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
  - d. there is legal right of access to and from the land,
  - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. Deed of Trust Security Agreement - Financing Statement dated November 19, 2010, filed January 6, 2011, executed by Ballenger Construction Company, a Texas corporation to Jimmy R. Locke, Trustee for the benefit and payable to the order of The Frost National Bank, recorded under Clerk's File No. 2011-0000037, Volume 620, Page 1071, Official Public Records of Willacy County, Texas, secured by a revolving Line of Credit in the principal amount of \$25,000,000.00; and (2) Term Loan in the principal sum of \$5,500,000.00, both of said notes bearing interest as therein specified, containing an attorney's fee clause, and with interest and principal being payable as therein specified; and all indebtedness, obligations and liabilities arising pursuant to the provisions of this Deed of Trust, and the Loan Agreement dated September 15, 2009, as modified by the Modification of Loan Agreement dated August 5, 2010, and the Second Modification of Loan Agreement dated November 19, 2010, (collectively "Loan Agreement"),  
  
Modification, Renewal and Extension dated December 31, 2010, but effective November 9, 2010, executed by Ballenger Construction Company, a Texas corporation to The Frost National Bank, recorded under Clerk's File No. 2011-0000038, Volume 620, Page 1123, Official Public Records of Willacy County, Texas.  
  
Second Modification, Renewal and Extension entered September 15, 2011, executed by Ballenger Construction Company, a Texas corporation to The Frost National Bank, recorded under Clerk's File No. 2011-0002414, Volume 621, Page 2879, Official Public Records of Willacy County, Texas. (NOTE: SUBJECT PROPERTY ADDED AS TRACT 25/ADDITIONAL PROPERTY.)  
  
Release or satisfaction of outstanding liens.

Effective Date: February 7, 2016



## SCHEDULE C

(Continued)

6. Deed of Trust, Security Agreement - Financing Statement effective September 15, 2011, filed December 1, 2011, executed by Ballenger Construction Company, a Texas corporation to Jimmy R. Locke, Trustee for the benefit and payable to the order of The Frost National Bank, recorded under Clerk's File No. 2011-0002415, Official Public Records of Willacy County, Texas, to secure payment of the indebtedness evidence by those certain promissory notes (the "Notes") dated September 15, 2009, incorporated herein by this reference, both executed by Grantor and payable to the order of The Frost national Bank, which definition shall include any holder of the indebtedness), to-wit: (1) Revolving Line of Credit in the principal amount of \$12,000,000.00; and (2) Term Loan in the principal sum of \$5,500,000.00; and the 2011 Term Loan in the principal amount of \$13,000,000.00, all of said notes bearing interest as therein specified, containing an attorney's fee clause, and with interest and principal being payable as therein specified; and all indebtedness, obligations and liabilities arising pursuant to the provisions of this Deed of Trust, and the Loan Agreement dated September 15, 2009, as modified by the Modification of Loan Agreement dated August 5, 2010, and the Second Modification of Loan Agreement dated November 19, 2010, and the Third Modification of Loan Agreement dated September 15, 2011 (collectively "Loan Agreement"),

Release or satisfaction of outstanding liens.

7. UCC Financing Statement filed January 17, 2012, executed by Ballenger Construction Company, a Texas corporation to The Frost National Bank, recorded under Clerk's File No. 2012-0000087, Volume 621, Page 4222, Official Public Records of Willacy County, Texas.

Release or satisfaction of outstanding liens.

8. Regarding Pending Bankruptcy Proceedings on The Estate of BALLENGER CONSTRUCTION COMPANY, Debtor in Case No. 12-20645-Chapter 11, United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, company requires the following:

REQUIREMENT: Need C/C of signed Motion and Approved Order to Sell subject property under search Free and Clear of all Liens by Michael B. Schmidt, Bankruptcy Trustee for The Estate of BALLENGER CONSTRUCTION COMPANY, Debtor in Case No. 12-20645-Chapter 11, United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, under this transaction.

9. REQUIREMENT: Prior to closing this transaction, Company requires a Survey and Field Notes/Metes and Bounds describing the exact boundaries of the property to be insured for examination and approval. The survey must reflect the adjacent owner(s) and dedicated road(s) to subject property road which complies with the General Rules of Procedures and Practices Act RE.663.18, Certification Item #7. This Commitment will be amended upon receipt of the survey and metes and bounds description.

10. We reserve the right to complete Schedule "A" when furnished the (amount or entity) to be insured.

This Commitment is also subject to checking the name(s) of the purchaser(s) for Federal Judgment Liens in favor of the United States; for Chapter 12 or 13 Bankruptcy Proceedings; Texas Workforce Commission Liens; and to see if their name(s) appear(s) on the List of Known or Suspected Terrorist Maintained by the Office of Foreign Asset Control pursuant to the USA Patriot Act.

Effective Date: February 7, 2016



**SCHEDULE C**

(Continued)

11. Company must be furnished a properly executed Affidavit of Debts and Liens executed by the Seller, if a sale or by the Borrower, if a loan only.
12. Company must be furnished with a properly executed waiver of inspection, executed by the purchaser. (Owner Policy Only).
13. Except in an exempt transaction, the Company must be furnished with Seller's Social Security Number or Tax Identification Number and all other information necessary to complete IRS Form 1099-S.
14. Company will require that we be furnished with tax certificates from each taxing unit that assesses the land we are being asked to insure showing all taxes paid for the land plus improvements through 2014.
15. In compliance with Procedural Rule P-2.b. involving residential real property in connection with a Mortgagee Policy issued on a loan to renew, extend or satisfy a lien already covered by a Mortgagee Policy, the company hereby notifies borrower of the borrower's right to substitute a qualifying affidavit in lieu of an updated survey.
16. If the area and boundary exception is to be amended to show only "shortages in area", Company must be furnished with a survey showing a plat and containing the correct description of the subject property made by a Licensed Public Surveyor of the State of Texas, acceptable to this Title Company; or a survey affidavit if the prior survey on subject property is less than six (6) months old, either of which must be reviewed and approved by the issuing office prior to closing.
17. Any matters revealed by current, on the ground as-built survey. NOTE: Company reserves the right to revise this Commitment and to make additional requirements upon receipt of a new survey of the Property.
18. Notice to all buyers, sellers, borrowers, lenders and all parties interested in the transaction covered by this commitment: Effective September 26, 1988, the State Board of Insurance has adopted Procedural Rule P-27 (as amended) which requires that "Good Funds" be received and deposited before a Title Agency may disburse from its trust fund account.  
  
"Good Funds" means:  
  
1. Cash or wire transfers; 2. Certified checks, cashier's checks and teller's checks, as further described in definition "g" of this rule; 3. Uncertified funds in amounts less than \$1,500.00 including checks, traveler's checks, money orders, and negotiable orders of withdrawal, provided multiple items shall not be used to avoid the \$1,500.00 limitation; 4. Uncertified funds in the amounts of \$1,500.00 or more, drafts and any other item when collected by the financial institution; 5. State of Texas warrants; 6. United States Treasury checks; 7. Checks drawn on a bank or savings and loan association insured by the FDIC or FSLIC and for which a transaction code has been issued pursuant to, and in compliance with, such bank or savings and loan association; 8. Checks by City and County Governments located in the State of Texas.
19. Beginning January 1, 2004, all deeds, mortgages, and deeds of trust must include the following Notice on the front page of the document: "NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: Your Social Security Number or your Driver's License."
20. NOTICE: Title Company is unwilling to issue the Title Policy without the mineral exception(s) set out in Schedule B hereof. Optional Endorsements (T19.2 and T19.3) insuring certain risks involving minerals,

Effective Date: February 7, 2016

## SCHEDULE C

(Continued)

and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase-Neither this Policy, nor the optional endorsements, insure that the purchaser has title to the mineral rights related to the surface estate. The promulgated cost for each endorsement is \$50 on an Owners Title Policy and \$0 charge on a Loan Policy.

21. Any lien or liens created in the instruments of conveyance or any security instruments executed in connection with the transaction to be insured will appear as an exception under Schedule B of the policy to be issued and/or as the lien to be insured under Schedule "A" of the Mortgagee Title Policy to be issued, all of which instruments will be subject to the approval of the company and the wording of the exception in the policy to be issued will be based upon the terms of the instruments.
22. The conveyance by sellers must be by a "GENERAL WARRANTY DEED" unless approved by company in advance.
23. CLOSING INSTRUCTIONS AND CLOSING PACKAGE MUST BE RECEIVED IN OUR OFFICE 24 HOURS PRIOR TO CLOSING. IF THIS REQUIREMENT IS NOT MET, SAN JACINTO TITLE SERVICES CANNOT GUARANTEE THE DATE AND TIME OF CLOSING.
24. At closing of this transaction, Title Company must be furnished a copy of the buyers' and/or sellers' official photo identification card.
25. Building, Zoning, Platting and Regulatory Ordinances of the County of Willacy, Texas.
26. The Company may make other requirements or exceptions upon its review of any requested documentation or of the proposed documents creating the estate or interest to be insured or otherwise ascertaining details of the transaction. Company reserves the right to revise this commitment and/or to make additional requirements or corrections at any time prior to the closing of this transaction. Any defect, lien or other matters that may affect title to the land or interest insured, that arises or is filed after the effective date of this commitment.NOTE: This file must be updated within 24 hours prior to Closing.

Effective Date: February 7, 2016