

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re: § **Chapter 11**
§
Carl Merkle § **Bankruptcy Case No. 16-50026**
§
Debtor §

DEBTOR’S MOTION TO APPROVE SALE OF REAL ESTATE ASSET FREE AND CLEAR OF ALL INTERESTS EXCEPT TENANT LEASES PURSUANT TO 11 U.S.C. § 363(b) and (f)

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE; Carl Merkle, (the “Debtor”), Debtor and Debtor-in-Possession in the abovementioned case, respectfully files this Motion to Approve Sale of Real Estate Asset Free and Clear of all Interests Except Tenant Leases Pursuant to 11 U.S.C. § 363(b) and (f), and would show the following:

I. PROCEDURAL HISTORY

1. On February 1, 2016, Debtor filed a petition under Chapter 11 of the Title 11, United States Code (“Case”), 11 U.S.C. §§ 101-1330 as a "small business" debtor. Debtor has continued in possession and management of its property as Debtor-in-Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction to hear this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III. FACTUAL BACKGROUND

3. On May 9th, 2017, Debtor signed a real estate contract (“Real Estate Contract” hereinafter) to sell land located at 4535 Schertz Road, San Antonio, TX 78233, **NCB 12517, 551 E8. Lot 3 & 18, Blk. 7, Bexar County, Texas** (the “Property”) to Ron Shay & Jeff Chapparo and which Contract was subsequently assigned to Hero’s Village, LLC (the “Buyers” hereinafter)¹ or its assigns. The contract originally provided a purchase price of \$1,400,000.00. The sales price was then decreased to \$1,325,000.00. The Buyers are now willing and able to close on the sale. There is a proposed closing date under the contract of June 12, 2017.²

4. The Property is a 28-unit apartment complex. Bexar County assessed the value of the property at \$1,500,530.00.³ Stouffer & Associates Real Estate Appraisers appraised the value of the Property at \$1,330,000.00.⁴

5. The Property currently has twenty-three tenants and/or occupied units.

6. On May 18, 2017 Capital Crossing Servicing Company, LLC and/or Pilgrim REO, LLC filed an amended proof of claim against the Property in the amount of \$964,253.16. Debtor objects to the claim and believes after hearing the objection, the court will disallow most or all of the claim and find the claim is not secured. The payoff amount owed to the secured lender (according to the lender’s records) on this real estate is \$967,678.68 as of May 31st, 2017, this amount is also objected to, however according to the secured lender the loan continues to accrue interest at \$142.73 daily thereafter.

¹ Real Estate Contract attached as Exhibit A and amendment attached as A-1

² See Seller’s Statement attached as Exhibit B

³ See Bexar County Tax Appraisal attached as Exhibit C

⁴ See Stouffer & Associates Real Estate and Appraisers and Consultants report attached as Exhibit D.

7. Bexar County filed a claim for property taxes in the amount of \$66,598.60. Janie Merkle filed a secured claim, based on a property division agreement in divorce proceedings, in the amount of \$184,143.42.

8. Any additional claims against this estate are anticipated to be less than \$50,000.00.

IV. RELIEF REQUESTED

9. Debtor requests the Court authorize sale of the Property to the Buyers free and clear of all interest except the sale shall be subject to the aforementioned leases. Out of closing, Debtor requests Capital Crossing Servicing Company, LLC and/or Pilgrim REO, LLC, Bexar County, Janie Merkle, and all closing costs be paid at their claimed amounts with Debtor reserving the right to contest the amounts paid post closing.

10. Any payments made to Capital Crossing Servicing Company, LLC and/or Pilgrim REO, LLC are subject of adjustment by this Court pending the outcome of claims objections as stated in the Confirmation Order.

11. Debtor further requests that Administrative Expenses of \$10,000.00 plus outstanding monthly fees of \$5,000.00 be paid to The Smeberg Law Firm (Attorneys) following the closing of the Property sale.

12. Debtor requests the remaining funds be held either in escrow with the title company or if the title company is unable or unwilling to hold the funds, the funds be held in the Guerra Days Law Group, PLLC account at Chase Bank until further order of the Court.

V. ARGUMENTS AND AUTHORITY

13. Section 363(b)(1) of the Bankruptcy Code provides that, “the Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts generally have applied four factors in determining whether

to approve a sale pursuant to § 363 of the Bankruptcy Code: (1) whether a valid business justification exists for the proposed transaction; (2) whether fair consideration is provided; (3) whether the transaction has been proposed in good faith; and (4) whether adequate and reasonable notice is provided. *240 North Brand Partners, Ltd. V. Colony GFP Partners, L.P. (In re 240 North Brand Partners, Ltd.)*, 200 B.R. 653, 659 (9th Cir. B.A.P. 1996); *United States Internal Revenue Service v. Moberg Trucking, Inc. (In re Moberg Trucking, Inc.)*, 112 B.R. 362, 364 (9th Cir. B.A.P. 1990) (dissenting) (citing the four factors in determining whether a sale pursuant to § 363(b) should be approved). As set forth herein, cause exists with respect to the sales encompassed within this Motion.

14. The Debtor also proposes the sale of the Property be “free and clear” of interests to the fullest extent in accordance with section 363(f) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides that a trustee “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” This provision generally allows a trustee (in this case Debtor subject to court approval) to sell property of the estate outside the ordinary course of business where the proposed sale is a sound exercise of the trustee’s business judgment, the sale is proposed in good faith, and is for fair value. *Committee of Equity Security Holders v. Lionel Corporation (In re Lionel Corp.)*, 722 F.2d 1063, 1010 (2d Cir. 1983).

15. One or more of the following must also be demonstrated in order for a sale to be free and clear of interests pursuant to section 363(f) of the Bankruptcy Code when:

- a. Applicable non-bankruptcy law permits a sale free and clear of such interest;
- b. The holder of the interest consents

- c. The interest is a lien and the price at which the property is to be sold exceeds the aggregate value of all liens against it;⁵
- d. The interest is in bona fide dispute; or,
- e. The holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of such interest.

16. The Bankruptcy Code Authorized the Debtor to sell the Property.

17. Debtor proposes to sell the Property and consents to the sale. Other than the Debtor, the other parties holding an interest in the Real Property are creditors holding liens to secure the payment of debts. The Property was appraised by Bexar County at \$1,500,530.00 and the price being obtained by the Debtor is **LESS** than the appraised value. However, the amount being obtained is enough to pay the secured creditor, taxes, closing costs, all other likely creditors. In regard to Capital Crossing Servicing Company, LLC and/or Pilgrim REO, LLC, the claim is subject to a bona fide dispute. Even if the Lender's claim is found valid, it is in Lender's interest to have the property sold.

18. Under these conditions, Debtor contends the sale is in the best interest of the estate and its creditors and should be approved.

VI. NOTICE AND OBJECTIONS

19. An element for the approval of a sale under § 363(b) of the Bankruptcy Code is the requirement that interested parties receive adequate and reasonable notice. Debtor's attorney has caused a copy of this Motion to be served First Class United States Mail upon (1) the Debtor; (2) the Trustee, (3) the secured creditors of the Debtor; (4) the twenty largest unsecured creditors of the Debtor; (5) the United States Trustee; and (6) those persons who have formally appeared in this Case and requested service pursuant to Bankruptcy Rule 2002; and (7) all applicable

⁵ See Seller's Statement attached as Exhibit B

government agencies to the extent required by the Bankruptcy Rules and the Local Rules. The Debtor submits that no other or further notice need be provided.

20. Debtor is seeking expedited consideration. Only appearance at the hearing shall be required to preserve an objection to sale.

21. WHEREFORE, the Debtor respectfully requests that the Court enter an order approving the sale in accordance with the terms and conditions set out in this Motion and granting such other relief as is just and proper.

Dated: May 23, 2017.

Respectfully submitted,

/s/ Ricardo Guerra

Ricardo Guerra
Guerra | Days Law Group, PLLC, State Bar
No. 24074331
Attorney for Debtor
2211 Rayford Rd. Ste. 111, #134
Spring, Texas 77386
Tel. 281.760.4295
Fax. 866.325.0341
Bankruptcy@guerradays.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 22, 2017, a true and correct copy of the foregoing, was served by U.S. First Class mail and/or ECF Transmission on the US Trustee, Standing Chapter 11 Substitute Trustee, Debtor, Parties in Interest and Parties Requesting Notice.

/s/ Eric Days

Eric Days

SERVICE LIST:

DEBTOR

Carl Merkle
4535 Schertz Road Apt.
406
San Antonio, Texas 78233

GOVERNMENTAL ENTITIES

U.S. Trustee
Attn: James Rose
P.O. Box 1539
San Antonio, TX 78295-1539

U.S. Attorney
Attn: Bkcy Division
601 NW Loop 410, Suite 600
San Antonio, Texas 78216

Comptroller of Public Accounts
P.O. Box 149359
Austin, TX 78714-9359

Internal Revenue Services
Special Procedures Branch
300 E. 8th St. STOP 5026
AUS
Austin, TX 78701

County of Bexar
Attn: David G. Aelvoet
Linebarger Goggan Blair & Sampson, LLP
711 Navarro Street, Suite 300
San Antonio, Texas 78205

SECURED CREDITORS

Pilgrim REO, LLC

C/o Capital Crossing
Service Company
99 High Street
Boston, MA 02110

David Gragg
Langley & Banack
745 E Mulberry Ave #900
San Antonio, Texas 78212

TWENTY LARGEST CREDITORS

Acadian Ambulance
Service
PO Box 929970
130 E Kaliste Saloom
Road
Lafayette, LA 70509

Account Control Techno
21700 Oxnard St, Ste 1400
Woodland Hills, CA 91367

Bank of America
PO Box 26012
Greensboro, NC 27410

Baptist Medical Center
P.O. Box 843810
Dallas, TX 75284-3810

Bexar County Tax
Assessor-Collector
Attn: Bankruptcy Dept.
PO Box 839950
San Antonio, TX 78283-3950

Caf/Carmax Auto
Attn: Bankruptcy
PO Box 440609
Kennesaw, GA 30160

Capital One
Attn: Bankruptcy
PO Box 30285
Salt Lake City, UT 84130

Chelsea Lew
15 Woodmere Blvd
Woodmere, NY 11598-2125

Citibank
Citicorp Credit Services
Attn: Centralized
Bankruptcy
PO Box 790040
St Louis, MO 63179

City of San Antonio, EMS
621 N. Alamo
San Antonio, TX 78215

Home Depot (Citibank
USA)
Attn: Centralized
Bankruptcy
Po Box 790328
St. Louis, MO 63179

Ilchenko Design &
Construction, LLC
4535 Schertz Road, #406
San Antonio, TX 78233

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Janie J. Merkle
6 Williamsburg
Irvine, CA 92620

Julie Merkle

1216 Conway Ave.
Costa Mesa, CA 92626

Synchrony Bank/Walmart
PRA Receivables
Management, LLC

PO Box 41021
Norfolk, VA 23541

Texas Comptroller of
Public Accounts
P.O. Box 149359

Austin, TX 78714-9359

Verizon
500 Technology Dr, Suite
500
Weldon Spring, MO 63304

Exhibit A



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - IMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2016

1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

DS Seller: Carl Merkle
Address: 4446 Bayliss St, San Antonio, TX 78233-6913
Phone: (210)596-4088 E-mail: carl.merkle@gmail.com
Fax: _____ Other: _____



Buyer: Ron Seay & Jeff Chapparo and/or assigns

DS Address: PO Box 151355, Austin, TX 78715-1355
Phone: (512)689-6742 E-mail: ronseay@yahoo.com
Fax: 512-986-3095 Other: 2jeffchap@gmail.com



2. **PROPERTY:**

A. "Property" means that real property situated in Bexar County, Texas at 4535 Schertz Road, San Antonio, TX 78233 (address) and that is legally described on the attached Exhibit _____ or as follows: NCB 14337 BLK 4 LOT 35

B. Seller will sell and convey the Property together with:

- (1) all buildings, improvements, and fixtures;
- (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (4) Seller's interest in all licenses and permits related to the Property;
- (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: _____

Any personal property not included in the sale must be removed by Seller prior to closing.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

(If mineral rights are to be reserved an appropriate addendum should be attached.)

(If the Property is a condominium, attach Commercial Contract Condominium Addendum (TAR-1930).)

3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property:

A. Cash portion payable by Buyer at closing \$	<u>350,000.00</u>
B. Sum of all financing described in Paragraph 4 \$ ^{DS}	<u>1,050,000.00</u>
C. Sales price (sum of 3A and 3B) \$ ^S	<u>1,400,000.00</u>

(TAR-1801) 1-1-16 Initialed for Identification by Seller _____, _____ and Buyer fl



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - IMPROVED PROPERTY

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Initials: CM
KS

Seller: Carl Merkle

Address: 4446 Bayliss St, San Antonio, TX 78233-6913
Currently living at 4535 Schertz Rd Apt 406, San Antonio, TX 78233, moving to address below
Phone: (210)596-4088 E-mail: carl.merkle@gmail.com
Fax: _____ Other: _____

Buyer: Ron Seay & Jeff Chapparo and/or assigns

Address: PO Box 151355, Austin, TX 78715-1355
Phone: (512)689-6742 E-mail: ronseay@yahoo.com
Fax: _____ Other: zjeffchap@gmail.com

2. **PROPERTY:**

A. "Property" means that real property situated in Bexar County, Texas at 4535 Schertz Road, San Antonio, TX 78233 (address) and that is legally described on the attached Exhibit _____ or as follows: NCB 14337 BLK 4 LOT 35

B. Seller will sell and convey the Property together with:

- (1) all buildings, improvements, and fixtures;
- (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (4) Seller's interest in all licenses and permits related to the Property;
- (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: _____

Any personal property not included in the sale must be removed by Seller prior to closing.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

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3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property:

A. Cash portion payable by Buyer at closing	\$	<u>350,000.00</u>
B. Sum of all financing described in Paragraph 4	\$	<u>1,050,000.00</u>
C. Sales price (sum of 3A and 3B)	\$	<u>1,400,000.00</u>

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

4. FINANCING: Buyer will finance the portion of the sales price under Paragraph 3B as follows:

- A. **Third Party Financing:** One or more third party loans in the total amount of \$ 1,050,000.00 . This contract:
 - (1) is not contingent upon Buyer obtaining third party financing.
 - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).
- B. **Assumption:** In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____ .
- C. **Seller Financing:** The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ _____ .

5. EARNEST MONEY:

- A. Not later than 3 days after the effective date, Buyer must deposit \$ \$50,000.00 as earnest money with Wally Tingley & Associates Texas Title (title company) at 8235 Shoal Creek, Austin, TX 78757 (address) Attn: Paula Brown (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ _____ with the title company to be made part of the earnest money on or before:
 - (i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
 - (ii) _____ .
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY, SURVEY, AND UCC SEARCH:

A. **Title Policy:**

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
 - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
 - (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
- (3) Within 7 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

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Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

4. FINANCING: Buyer will finance the portion of the sales price under Paragraph 3B as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ 1,050,000.00 . This contract:
 - (1) is not contingent upon Buyer obtaining third party financing.
 - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____ .
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ _____ .

5. EARNEST MONEY:

- A. Not later than 3 days after the effective date, Buyer must deposit \$ \$50,000.00 as earnest money with Wally Tingley & Associates Texas Title (title company) at 8235 Shoal Creek, Austin, TX 78757 (address) Attn: Paula Brown (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ _____ with the title company to be made part of the earnest money on or before:
 - (i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
 - (ii) _____ .
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

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 - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
 - (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
- (3) Within 7 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

B. Survey: Within 5 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer _____ (insert amount) of the cost of the survey at closing, if closing occurs.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller _____ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- (1) Within _____ days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.
- (2) Buyer does not require Seller to furnish a UCC search.

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

- (1) Within 10 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.
- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

B. Survey: Within 5 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer _____ (insert amount) of the cost of the survey at closing, if closing occurs.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller _____ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- (1) Within _____ days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.
- (2) Buyer does not require Seller to furnish a UCC search.

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

- (1) Within 10 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.
- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

I got a survey when purchased, but not sure I can locate, has been so long.

INITIAL HERE

INITIAL HERE

DS
RS

INITIAL HERE

I don't have a survey - will need to be ordered

INITIAL HERE

Seller

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: Property will be sold AS IS

B. Feasibility Period: Buyer may terminate this contract for any reason within 30 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 250.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(3) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(4) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 5 days after the effective date, Seller will deliver to Buyer: (Check all that apply.)

DS
RS

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

7. PROPERTY CONDITION:

DS
CM

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: Property will be sold AS IS, *As is*



B. Feasibility Period: Buyer may terminate this contract for any reason within 30 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

DS
RS

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 250.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

Handwritten notes:
\$250
\$250
\$250
\$250

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

- (1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.
- (2) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.
- (3) Buyer must:
 - (a) employ only trained and qualified inspectors and assessors;
 - (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
 - (c) abide by any reasonable entry rules or requirements of Seller;
 - (d) not interfere with existing operations or occupants of the Property; and
 - (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.
- (4) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 5 days after the effective date, Seller will deliver to Buyer: (Check all that apply.)

Handwritten signature: Seller

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

- (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;
- (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- (g) copies of all current warranties and guaranties relating to all or part of the Property;
- (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- (i) copies of all leasing or commission agreements that currently relate to the tenants of all or part of the Property;
- (j) a copy of the "as-built" plans and specifications and plat of the Property;
- (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- (l) a copy of Seller's income and expense statement for the Property from January 1, 2015 to February 28, 2017 ;
- (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (n) real & personal property tax statements for the Property for the previous 2 calendar years; and
- (o) Tenant reconciliation statements including, operating expenses, insurance and taxes for the Property from _____ to _____ ; and
- (p) _____

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: *(Check all that apply.)*

- (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied; and
- (c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

- (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;
- (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- (g) copies of all current warranties and guaranties relating to all or part of the Property;
- (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- (i) copies of all leasing or commission agreements that currently relate to the tenants of all or part of the Property;
- (j) a copy of the "as-built" plans and specifications and plat of the Property;
- (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- (l) a copy of Seller's income and expense statement for the Property from January 1, 2015 to February 28, 2017 ;
- (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (n) real & personal property tax statements for the Property for the previous 2 calendar years; and
- (o) Tenant reconciliation statements including, operating expenses, insurance and taxes for the Property from _____ to _____ ; and
- (p) _____ ; and

DS
CM



I can provide all past appraisal reports, I have no other studies in my possession.

- (2) **Return of Property Information:** If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: *(Check all that apply.)*
- (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
 - (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied; and
 - (c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. **Contracts Affecting Operations:** Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

- A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:
- (1) any failure by Seller to comply with Seller's obligations under the leases;
 - (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

- (3) any non-occupancy of the leased premises by a tenant;
- (4) any advance sums paid by a tenant under any lease;
- (5) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (6) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. **Estoppel Certificates:** Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

DS
CM

INITIAL MARK
DS
RS

9. **BROKERS:**

A. The brokers to this sale are:

Principal Broker: ACR Multifamily

Agent: Reynold Toepfer

Address: 2501 N Lamar Blvd Ste 300

Austin, TX 78705

Phone & Fax: (612)422-5384

E-mail: Reynold@ACRmultifamily.com

License No.: 577132

Cooperating Broker: The Seay Group

Agent: Ron Seay

Address: _____

Phone & Fax: _____

E-mail: ronseay@yahoo.com

License No.: _____

- Principal Broker: (Check only one box.)
- represents Seller only.
 - represents Buyer only.
 - is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. **Fees:** (Check only (1) or (2) below.)
 (Complete the Agreement Between Brokers on page 14 only if (1) is selected.)

(1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:
 _____ % of the sales price.

Cooperating Broker a total cash fee of:
 _____ % of the sales price.

The cash fees will be paid in Bexar/Travis County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

DS
RS

Commercial Contract - Improved Property concerning 4536 Schertz Road, San Antonio, TX 78233

- (3) any non-occupancy of the leased premises by a tenant;
- (4) any advance sums paid by a tenant under any lease;
- (5) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (6) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

9. BROKERS:

A. The brokers to this sale are:

Principal Broker: ACR Multifamily

Agent: Reynold Toepfer

Address: 2501 N Lamar Blvd Ste 300
Austin, TX 78705

Phone & Fax: (512)422-5384

E-mail: Reynold@ACRmultifamily.com

License No.: 577132

Cooperating Broker: _____

Agent: _____

Address: _____

Phone & Fax: _____

E-mail: _____

License No.: _____

Principal Broker: (Check only one box.)

- represents Seller only.
- represents Buyer only.
- is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. Fees: (Check only (1) or (2) below.)

(Complete the Agreement Between Brokers on page 14 only if (1) is selected.)

(1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:
 _____ % of the sales price.

Cooperating Broker a total cash fee of:
 _____ % of the sales price.

The cash fees will be paid in Bexar/Travis County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

A. The date of the closing of the sale (closing date) will be on or before the later of:

(1) _____ days after the expiration of the feasibility period.

_____ (specific date).

60 days after receipt of Purchase Contract by Escrow Officer

(2) 7 days after objections made under Paragraph 6D have been cured or waived.

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

C. At closing, Seller will execute and deliver to Buyer, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:

(1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;

(2) without any assumed loans in default; and

(3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

D. At closing, Seller, at Seller's expense, will also deliver to Buyer:

(1) tax statements showing no delinquent taxes on the Property;

(2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;

(3) an assignment of all leases to or on the Property;

(4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:

(a) licenses and permits;

(b) maintenance, management, and other contracts; and

(c) warranties and guaranties;

(5) a rent roll current on the day of the closing certified by Seller as true and correct;

(6) evidence that the person executing this contract is legally capable and authorized to bind Seller;

(7) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and

(8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.

E. At closing, Buyer will:

(1) pay the sales price in good funds acceptable to the title company;

(2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;

(3) sign and send to each tenant in the Property a written statement that:

(a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and

(b) specifies the exact dollar amount of the security deposit;

(4) sign an assumption of all leases then in effect; and

(5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

DS
16

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

A. The date of the closing of the sale (closing date) will be on or before the later of:

- (1) _____ days after the expiration of the feasibility period.
- _____ (specific date).

60 days after receipt of Purchase Contract by Escrow Officer _____

- (2) 7 days after objections made under Paragraph 6D have been cured or waived.

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

C. At closing, Seller will execute and deliver to Buyer, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:

- (1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
- (2) without any assumed loans in default; and
- (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

D. At closing, Seller, at Seller's expense, will also deliver to Buyer:

- (1) tax statements showing no delinquent taxes on the Property;
- (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
- (3) an assignment of all leases to or on the Property;
- (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
 - (a) licenses and permits;
 - (b) maintenance, management, and other contracts; and
 - (c) warranties and guaranties;
- (5) a rent roll current on the day of the closing certified by Seller as true and correct;
- (6) evidence that the person executing this contract is legally capable and authorized to bind Seller;
- (7) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and
- (8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.

E. At closing, Buyer will:

- (1) pay the sales price in good funds acceptable to the title company;
- (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
- (3) sign and send to each tenant in the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
- (4) sign an assumption of all leases then in effect; and
- (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

11. **POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. **SPECIAL PROVISIONS:** The following special provisions apply and will control in the event of a conflict with other provisions of this contract. *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

Upon waiver of all contingencies, Seller's counsel shall file an expedited motion to approve sale of the property with the bankruptcy court and seller shall have 30 days to obtain court approval of the sale.

One half of the Earnest Money Deposit (\$25,000) shall become non-refundable to Buyer on Day One and passed-thru to Seller.

DS
CM

✓ OK

- Buyer's acknowledge that seller's current residence, which has been the case since April 2012, is 4535 Schertz Road, Apt 406, San Antonio, TX 78233. Buyer will relocate to 4446 Bayliss, San Antonio, TX 78233 either by the time of close of escrow, or within ~~_____ days, and if held over will pay rent at the rate of _____ / month.~~

INITIAL DEED
LP

DS
INITIAL HERE

13. SALES EXPENSES:

A. **Seller's Expenses:** Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) release of Seller's loan liability, if applicable;
- (3) tax statements or certificates;
- (4) preparation of the deed and any bill of sale;
- (5) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

B. **Buyer's Expenses:** Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation fees of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee; and
- (6) other expenses that Buyer will pay under other provisions of this contract.

Seller
Buyer

Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: The following special provisions apply and will control in the event of a conflict with other provisions of this contract. *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

Upon waiver of all contingencies, Seller's counsel shall file an expedited motion to approve sale of the property with the bankruptcy court and seller shall have 30 days to obtain court approval of the sale.

One half of the Earnest Money Deposit (\$25,000) shall become non-refundable to Buyer on Day One and passed-thru to Seller.

13. SALES EXPENSES:

A. Seller's Expenses: Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) release of Seller's loan liability, if applicable;
- (3) tax statements or certificates;
- (4) preparation of the deed and any bill of sale;
- (5) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation fees of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee; and
- (6) other expenses that Buyer will pay under other provisions of this contract.

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Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

14. PRORATIONS:

A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(4) which Seller may pursue, or
(Check if applicable)

enforce specific performance, or seek such other relief as may be provided by law.

B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:

- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
- (2) extend the time for performance up to 15 days and the closing will be extended as necessary.

C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:

- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
- (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CASUALTY LOSS AND CONDEMNATION:

A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:

- (1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;

Commercial Contract - Improved Property concerning 4536 Schertz Road, San Antonio, TX 78233

14. PRORATIONS:

A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(4) which Seller may pursue, or
(Check if applicable)
 enforce specific performance, or seek such other relief as may be provided by law.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
(2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
(2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CASUALTY LOSS AND CONDEMNATION:

- A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:
(1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;

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- (2) extend the time for performance up to 15 days and closing will be extended as necessary; or
- (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.

B. If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer; or
- (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to: (a) Seller and the sales price will be reduced by the same amount; or (b) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company 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 the title company may pay the same to the creditors.
- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after 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.
- G. Seller Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

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- (2) extend the time for performance up to 15 days and closing will be extended as necessary; or
- (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.

B. If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer; or
- (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to: (a) Seller and the sales price will be reduced by the same amount; or (b) Buyer and the sales price will not be reduced.

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19. MATERIAL FACTS: To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR-1408).
- B. Except as otherwise provided in this contract, Seller is not aware of:
 - (1) any subsurface: structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any material physical defects in the improvements on the Property; or
 - (11) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(11) in Paragraph 12 or an addendum.)

20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. AGREEMENT OF THE PARTIES:

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- D. Addenda which are part of this contract are: *(Check all that apply.)*
 - (1) Property Description Exhibit identified in Paragraph 2;
 - (2) Commercial Contract Condominium Addendum (TAR-1930);
 - (3) Commercial Contract Financing Addendum (TAR-1931);
 - (4) Commercial Property Condition Statement (TAR-1408);
 - (5) Commercial Contract Addendum for Special Provisions (TAR-1940);

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Commercial Contract - Improved Property concerning 4535 Schertz Road, San Antonio, TX 78233

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 - (1) any subsurface: structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any material physical defects in the improvements on the Property; or
 - (11) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(11) in Paragraph 12 or an addendum.)

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- D. Addenda which are part of this contract are: *(Check all that apply.)*
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 - (3) Commercial Contract Financing Addendum (TAR-1931);
 - (4) Commercial Property Condition Statement (TAR-1408);
 - (5) Commercial Contract Addendum for Special Provisions (TAR-1940);

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- (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TAR-1906);
- (7) Notice to Purchaser of Real Property in a Water District (MUD);
- (8) Addendum for Coastal Area Property (TAR-1915);
- (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
- (10) Information About Brokerage Services (TAR-2501); and
- (11) _____

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

E. Buyer may may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

23. TIME: Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. EFFECTIVE DATE: The effective date of this contract for the purpose of performance of all obligations is the date the title company receives this contract after all parties execute this contract.

25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. 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 fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, 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 purchaser 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 the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) 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 ETJ. To

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- (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TAR-1906);
- (7) Notice to Purchaser of Real Property in a Water District (MUD);
- (8) Addendum for Coastal Area Property (TAR-1915);
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- (10) Information About Brokerage Services (TAR-2501); and
- (11)

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

E. Buyer may may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

23. TIME: Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. EFFECTIVE DATE: The effective date of this contract for the purpose of performance of all obligations is the date the title company receipts this contract after all parties execute this contract.

25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. 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 fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, 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 purchaser 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 the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) 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 ETJ. To

(TAR-1801) 1-1-16

Initialed for Identification by Seller _____ and Buyer _____
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determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

- G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.
- H. Section 1958.154, Occupations Code requires Seller to provide Buyer a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the Seller sells the Property.
- I. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.
- J. 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."

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on April 14, 2017, the offer will lapse and become null and void.

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Seller: Carl Merkle

Buyer: Ron Seay & Jeff Chapparo and/or assigns

DocuSigned by:
Carl Merkle
AF43C15B443B4E3..

By: _____

By: _____

By (signature): _____

By (signature): Jeffrey Chapparo

Printed Name: _____

Printed Name: Jeffrey Chapparo

Title: _____

Title: Ron Seay

By: _____

By: _____

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

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AGREEMENT BETWEEN BROKERS

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay N/A (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- \$ _____, or
- _____ % of the sales price, or
- _____ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: _____ Cooperating Broker: _____

By: _____ By: _____

ATTORNEYS

Seller's attorney: _____ Buyer's attorney: _____

Address: _____ Address: _____

Phone & Fax: _____ Phone & Fax: _____

E-mail: _____ E-mail: _____

Seller's attorney requests copies of documents, notices, and other information:

- the title company sends to Seller.
- Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:

- the title company sends to Buyer.
- Seller sends to Buyer.

ESCROW RECEIPT

The title company acknowledges receipt of:

- A. the contract on this day 4.12.17 (effective date);
- B. earnest money in the amount of \$ 50,000.00 in the form of Wire on 4.12.17.

Title company: Wally Tingley + Assoc

Address: 8235 Shoog Creek

By: Erin Kieschnick

Austin, TX 78757
Phone & Fax: (512) 371-9100 ext 108

Assigned file number (GF#): 177408. AT

E-mail: Erin@wtatitle.com



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT FINANCING ADDENDUM

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**ADDENDUM TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED PARTIES CONCERNING
THE PROPERTY AT**

4535 Schertz Road, San Antonio, TX 78233

The portion of the Sales Price not payable in cash will be paid as follows: *(Check all that apply.)*

A. **THIRD PARTY FINANCING:**

- (1) The contract is contingent upon Buyer obtaining a third party loan(s) secured by the Property in the amount of \$ 1,050,000.00 for not less than 5 years with the initial interest rate not to exceed 6.000 % per annum and payments calculated on an amortization period of no less than 20 years.
- (2) Buyer will apply for the third party loan(s) described in Paragraph A(1) promptly after the effective date. If Buyer cannot obtain the loan(s), Buyer may give Seller written notice within 45 days after the effective date and the contract will terminate and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer. **If Buyer does not give such notice within the time required, this contract will no longer be subject to the contingency described in this Paragraph A.**

(3) Each note to be executed under this addendum is to be secured by vendor's and deed of trust liens.

B. **ASSUMPTION:**

- (1) Buyer will assume the unpaid principal balance of the existing promissory note secured by the Property payable to _____ dated _____ which balance at closing will be \$ _____.
- (2) Buyer's initial payment will be the first payment due after closing. Buyer's assumption of the existing note includes all obligations imposed by the deed of trust securing the note, recorded in _____ *(recording reference)* in the real property records of the county where the Property is located.
- (3) If the unpaid principal balance of the assumed loan as of the date of closing varies from the loan balance stated in Paragraph B(1), the cash payable at closing will be adjusted by the net amount of any variance; provided, if the total principal balance of the assumed loan varies in an amount greater than \$ _____ at closing, either party may terminate this contract and the earnest money will be refunded to Buyer unless either party elects to eliminate the excess in the variance by an appropriate adjustment at closing.
- (4) Buyer may terminate the contract and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer if the note holder on assumption requires:
 - (a) Buyer to pay an assumption fee in excess of \$ _____ and Seller declines to pay such excess;
 - (b) an increase in the interest rate to more than _____ %; or
 - (c) any other modification of the loan documents.
- (5) Unless Seller is released of liability on any assumed note, Seller requires a vendor's lien and deed of trust to secure assumption, which will be automatically released on execution and delivery of a release by the note holder.



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT FINANCING ADDENDUM

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**ADDENDUM TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED PARTIES CONCERNING
THE PROPERTY AT**

4535 Schertz Road, San Antonio, TX 78233

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- (3) Each note to be executed under this addendum is to be secured by vendor's and deed of trust liens.

B. ASSUMPTION:

- (1) Buyer will assume the unpaid principal balance of the existing promissory note secured by the Property payable to _____ dated _____ which balance at closing will be \$ _____.
- (2) Buyer's initial payment will be the first payment due after closing. Buyer's assumption of the existing note includes all obligations imposed by the deed of trust securing the note, recorded in _____ *(recording reference)* in the real property records of the county where the Property is located.
- (3) If the unpaid principal balance of the assumed loan as of the date of closing varies from the loan balance stated in Paragraph B(1), the cash payable at closing will be adjusted by the net amount of any variance; provided, if the total principal balance of the assumed loan varies in an amount greater than \$ _____ at closing, either party may terminate this contract and the earnest money will be refunded to Buyer unless either party elects to eliminate the excess in the variance by an appropriate adjustment at closing.
- (4) Buyer may terminate the contract and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer if the note holder on assumption requires:
 - (a) Buyer to pay an assumption fee in excess of \$ _____ and Seller declines to pay such excess;
 - (b) an increase in the interest rate to more than _____ %; or
 - (c) any other modification of the loan documents.
- (5) Unless Seller is released of liability on any assumed note, Seller requires a vendor's lien and deed of trust to secure assumption, which will be automatically released on execution and delivery of a release by the note holder.

(TAR-1931) 1-28-10

Initialed for Identification by Seller: _____, _____, and Buyer: _____

Page 1 of 4

Commercial Contract Financing Addendum concerning 4535 Schertz Road, San Antonio, TX 78233

(6) If assumption approval is required by the note holder, Buyer will apply for assumption approval within _____ days after the effective date of the contract and will make every reasonable effort to obtain assumption approval. If Buyer cannot obtain assumption approval, Buyer may give Seller written notice within _____ days after the effective date and the contract will terminate and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer. **If Buyer does not give such notice within the time required and Buyer does not close because Buyer is not able to assume the existing note, Buyer will be in default.**

C. SELLER FINANCING:

(1) At closing, Buyer will execute and deliver a promissory note (the note) from Buyer to Seller in the amount of \$ _____, bearing _____ % interest per annum. Matured, unpaid amounts will bear interest at the maximum rate of interest allowed by law.

(2) The note will be payable as follows:

(a) In one payment, due _____ after the date of the note, with interest payable: (i) monthly (ii) _____.

(b) In installments of \$ _____ including interest plus interest beginning _____ after the date of the note and continuing at monthly _____ intervals thereafter for _____ when the entire balance of the note will be due and payable.

(c) Interest only in monthly _____ installments for the first _____ years and thereafter in installments of \$ _____ including interest plus interest beginning _____ after the date of the note and continuing at monthly _____ intervals thereafter for _____ when the entire balance of the note will be due and payable.

(3) The note will be secured by vendor's and deed of trust liens and an assignment of leases payable at the place designated by Seller.

(4) The note will provide that if Buyer fails to timely pay an installment within 10 days after the installment is due, Buyer will pay a late fee equal to 5% of the installment not paid.

(5) The note will will not provide for liability (personal or corporate) against the maker in the event of default.

(6) The note may be prepaid in whole or in part at any time without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest will immediately cease on the prepaid principal.

(7) The lien securing payment of the note will be inferior to any lien securing any superior note described in this addendum. If an owner's policy of title insurance is furnished, Buyer, at Buyer's expense, will furnish Seller with a mortgagee title policy in the amount of the note at closing.

(8) If all or any part of the Property is sold or conveyed without Seller's prior written consent, Seller, at Seller's option, may declare the outstanding principal balance of the note, plus accrued interest, immediately due and payable. Any of the following is not a sale or conveyance of the Property:

- (a) the creation of a subordinate lien;
- (b) a sale under a subordinate lien;
- (c) a deed under threat or order of condemnation;
- (d) a conveyance solely between the parties; or
- (e) the passage of title by reason of death of a maker or operation of law.

DS
RS

Commercial Contract Financing Addendum concerning 4535 Schertz Road, San Antonio, TX 78233

(6) If assumption approval is required by the note holder, Buyer will apply for assumption approval within _____ days after the effective date of the contract and will make every reasonable effort to obtain assumption approval. If Buyer cannot obtain assumption approval, Buyer may give Seller written notice within _____ days after the effective date and the contract will terminate and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer. **If Buyer does not give such notice within the time required and Buyer does not close because Buyer is not able to assume the existing note, Buyer will be in default.**

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(a) In one payment, due _____ after the date of the note, with interest payable: (i) monthly (ii) _____.

(b) In installments of \$ _____ including interest plus interest beginning _____ after the date of the note and continuing at monthly _____ intervals thereafter for _____ when the entire balance of the note will be due and payable.

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- (a) the creation of a subordinate lien;
- (b) a sale under a subordinate lien;
- (c) a deed under threat or order of condemnation;
- (d) a conveyance solely between the parties; or
- (e) the passage of title by reason of death of a maker or operation of law.

Commercial Contract Financing Addendum concerning 4535 Schertz Road, San Antonio, TX 78233

- (9) Deposits for Taxes and Insurance: Together with the principal and interest installments, Buyer will will not deposit with Seller a pro rata part of the estimated annual ad valorem taxes on the Property and a pro rata part of the estimated annual insurance premiums for the improvements on the Property.
 - (a) If Buyer deposits taxes and insurance deposits with Seller, Buyer agrees that the taxes and insurance deposits are only estimates and may be insufficient to pay total taxes and insurance premiums. Buyer agrees to pay any deficiency within 30 days after Seller notifies Buyer of any deficiency. Buyer's failure to pay the deficiency is a default under the deed of trust.
 - (b) If any superior lien holder on the Property collects payments for taxes and insurance, any requirement to deposit taxes and insurance deposits with Seller under this addendum is inoperative so long as payments are being made to the superior lien holder.
- (10) Any event that constitutes a default under any superior lien constitutes a default under the deed of trust securing the note.
- (11) The note will include a provision for reasonable attorney's fees for any collection action.
- (12) Unless the parties agree otherwise, the form of the note and loan documents will be as found in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

D. CREDIT APPROVAL ON ASSUMPTION OR SELLER FINANCING:

- (1) To establish Buyer's creditworthiness for assumption approval or seller financing, Buyer will deliver to Seller the following information (Buyer's documentation) within _____ days after the effective date of the contract:
 - (a) verification of employment, including salary;
 - (b) verification of funds on deposit in financial institutions;
 - (c) current financial statement;
 - (d) credit report;
 - (e) tax returns for the following years _____;
 - (f) _____;
- (2) If Buyer does not timely deliver Buyer's documentation or Seller determines, in Seller's sole discretion, that Buyer's creditworthiness is not acceptable, Seller may terminate the contract by giving written notice to Buyer not later than _____ days after the date Buyer must deliver Buyer's documentation under Paragraph D(1) and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer. If Seller does not timely terminate the contract under this paragraph, Seller will be deemed to have accepted Buyer's credit.

E. SPECIAL PROVISIONS:

DS
RS

Commercial Contract Financing Addendum concerning 4535 Schertz Road, San Antonio, TX 78233

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 - (b) verification of funds on deposit in financial institutions;
 - (c) current financial statement;
 - (d) credit report;
 - (e) tax returns for the following years _____;
 - (f) _____
- (2) If Buyer does not timely deliver Buyer's documentation or Seller determines, in Seller's sole discretion, that Buyer's creditworthiness is not acceptable, Seller may terminate the contract by giving written notice to Buyer not later than _____ days after the date Buyer must deliver Buyer's documentation under Paragraph D(1) and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer. If Seller does not timely terminate the contract under this paragraph, Seller will be deemed to have accepted Buyer's credit.

E. SPECIAL PROVISIONS:

Commercial Contract Financing Addendum concerning 4535 Schertz Road, San Antonio, TX 78233

DocuSigned by:
Seller: Carl N. Merkle

By: AF43C15B443B4E3...

By (signature): _____
Printed Name: _____
Title: _____

By: _____
By (signature): _____
Printed Name: _____
Title: _____

Ron Seay/Jeffrey Chaparro and/or assigns
Buyer: _____

By: _____

By (signature): *[Signature]*
Printed Name: **Jeffrey Chaparro**

DocuSigned by:
Ron Seay
CE3A5B9357B8470...

By: _____
By (signature): _____
Printed Name: _____
Title: _____



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT SPECIAL PROVISIONS ADDENDUM

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**ADDENDUM TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED PARTIES CONCERNING
THE PROPERTY AT:**

4535 Schertz Rd, San Antonio, TX 78233-6964

The following special provisions apply and will control in the event of a conflict with the other provisions of the contract: As part of Section 7 Part D: The Seller will also provide:

- A. The rental applications for each tenant and any addendums or amendments to any leases,
- B. 12 months of cable, water, sewer, trash & electric bills for the property (Only those paid for by the seller not any directly billed to the tenants).
- C. Any Trash or Cable contracts (if any).

Additionally, Buyer and Seller agree to allocate the purchase price according to the attached Cost Segregation of Purchase Price Addendum.

Additionally, Seller agrees to give the buyer the option to extend the closing date an additional 30 days. To exercise this option the buyer will pay the seller an additional \$5,000.00 that will NOT apply to the purchase price.

DocuSigned by:
Seller: Mertle
AF43C15B443B4E3...

By: _____

By (signature): _____
Printed Name: _____
Title: _____

By: _____

By (signature): _____
Printed Name: _____
Title: _____

Buyer: _____

By: _____

By (signature): [Signature]
Printed Name: _____
Title: _____

DocuSigned by:
Buyer: Ron Seay
CE3A5B9357B8470...

By: _____


By (signature): _____
Printed Name: _____
Title: _____

(TAR-1940) 1-26-10


Cost Segregation of Purchase Price Addendum


4/10/2017

	<u>Number</u>	<u>Cost per Item</u>	<u>Total Item Cost</u>
Buildings	1	494100	494,100
Land	1	100000	100,000
Roofs	4	25000	100,000
Exterior Doors	28	575	16,100
Interior Doors	224	250	56,000
Light Fixtures	224	200	44,800
Sinks and Faucets	84	250	21,000
Toilets	56	500	28,000
Bathtubs	56	1000	56,000
Flooring	28	2500	70,000
Kitchen Appliances	28	2600	72,800
Cabinets	28	3000	84,000
Fencing	1	5000	5,000
Exterior Cameras	6	500	3,000
Exterior Lights	28	400	11,200
HVAC System	28	6000	168,000
Windows	140	350	49,000
Hot Water Heaters	28	750	21,000
Total Purchase Price			1,400,000

DocuSigned by:

AF43C15B443B4E3...

Seller: Carl N. Merkle

DocuSigned by:

CE3A5B9357B8470...


Buyer: Ron Seay/Jeff Chapparo and or assigns



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT AMENDMENT

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**AMENDMENT TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED BUYER AND SELLER
CONCERNING THE PROPERTY AT**

4535 Schertz Road, San Antonio, TX 78233

Effective May 9, 2017, Seller and Buyer amend the contract as follows: (Check all applicable boxes.)

A. Sales Price: The sales price in Paragraph 3 of the contract is changed to:

Cash portion payable by Buyer at closing. \$ 331,250.00

Sum of all financing described in the contract. \$ 993,750.00

Sales price (sum of cash portion and sum of all financing) \$ 1,325,000.00

B. Property Description: The Property's legal description in Paragraph 2A of the contract is changed to:


C. Repairs: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

Amendment to Commercial Contract concerning 4535 Schertz Road, San Antonio, TX 78233

- D. Extension of Feasibility Period: For nominal consideration, the receipt of which Seller acknowledges, and the consideration described under (1) or (2) below, if any, Buyer's right to terminate under Paragraph 7B of the contract is extended until 11:59 p.m. on _____ .
 - (1) The independent consideration for Buyer's right to terminate that will be deducted from the earnest money if Buyer terminates the contract under Paragraph 7B(1) is increased to a total amount of \$ _____. *(Insert an amount greater than the amount in Paragraph 7B(1) of the contract.)*
 - (2) Buyer has paid Seller additional consideration of \$ _____ for the extension. This additional consideration will will not be credited to the sales price upon the closing of the sale.
- E. Closing: The closing date in Paragraph 10A of the contract is changed to _____ .
- F. Expenses: At closing Seller will pay the first \$ _____ of Buyer's expenses under Paragraph 13 of the contract.
- G. Waiver of Right to Terminate: Upon final acceptance of this Amendment, Buyer waives the right to terminate under Paragraph 7B of the contract.
- H. Other Modifications:

Seller: Carl N Merkle _____

By: _____

DocuSigned by:

 AF43C15B443B4E3...

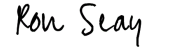
By (signature): _____
 Printed Name: **Carl Merkle**
 Title: _____

By: _____

By (signature): _____
 Printed Name: _____
 Title: _____


Ron Seay/Jeffrey Chaparro and/or Buyer: assigns _____

By: _____

DocuSigned by:

 CE3A5B9357B8470

By (signature): _____
 Printed Name: **Ron Seay**
 Title: _____

By: _____

DocuSigned by:

 796307833A0444D...

By (signature): _____
 Printed Name: **Jeff Chaparro**
 Title: _____



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT ASSIGNMENT OF BUYER'S INTEREST

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ASSIGNOR: Ron Seay & Jeff Chapparo

ASSIGNEE: Hero's Village, LLC

Address: Care of Ron Seay PO Box 151355 Austin, TX 78715

Phone: (512)689-6742

E-mail: ronseay@yahoo.com ; 2jeffchap@gmail.com

Fax: (512)986-3095

Other: _____

SELLER: Carl Merkle

PROPERTY: 4535 Schertz Rd, San Antonio, TX 78233-6964

CONTRACT: A Commercial Contract - Improved Property Unimproved Property executed by Assignor (as Buyer) and Seller concerning the Property, having an effective date of April 12, 2017.

For and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid by Assignee to Assignor, Assignor hereby assigns Assignor's interest in the Contract, including Assignor's interest as Buyer and Assignor's interest in the earnest money in the amount of \$ 50,000.00 to Assignee, and Assignee hereby assumes all of Assignor's responsibilities and obligations associated with Assignor's interest in the Contract.

SPECIAL PROVISIONS:

Ron Seay is a licensed Real Estate Broker and Principal in Hero's Village, LLC

This Assignment shall be effective as of May 16, 2017.

Commercial Contract Assignment concerning: **4535 Schertz Rd, San Antonio, TX 78233-6964**

Assignor: Ron Seay & Jeff Chapparo

Assignee: Hero's Village, LLC

By: _____
DocuSigned by:
Ron Seay
By (signature): _____
Printed Name: **Ron Seay**
Title: _____ Date: 5/17/2017

By: _____
DocuSigned by:
Jeff Chapparo
By (signature): _____
Printed Name: **Jeff Chapparo**
Title: **President** Date: 5/17/2017

By: _____
DocuSigned by:
Jeff Chapparo
By (signature): _____
Printed Name: **Jeff Chapparo**
Title: _____ Date: 5/17/2017

By: _____
By (signature): _____
Printed Name: _____
Title: _____ Date: _____

Seller consents to the assignment of Assignor's interest in the Contract to Assignee.

Seller: Carl Merkle

By: _____
DocuSigned by:
Carl Merkle
By (signature): _____
Printed Name: **Carl Merkle**
Title: _____ Date: 5/17/2017

By: _____
By (signature): _____
Printed Name: _____
Title: _____ Date: _____