

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

<p>In re</p> <p>HAHN HOTELS OF SULPHUR SPRINGS, LLC, <i>et al.</i>¹</p> <p style="text-align: center;">Debtors.</p>	§ § § § § § § § §	<p>Chapter 11</p> <p>Case No. 17-40947</p> <p>Jointly Administered</p> <p>Hearing requested for Nov. 14, 2017 at 2:45 p.m.</p>
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**DEBTORS’ EXPEDITED MOTION FOR ORDER AUTHORIZING
DEBTORS TO ENTER INTO LISTING AGREEMENTS AND CAPITAL SERVICES
ENGAGEMENT AGREEMENT WITH MARCUS & MILLICHAP**

TO THE HONORABLE BRENDA T. RHOADES, UNITED STATES BANKRUPTCY JUDGE:

Hahn Hotels of Sulphur Springs, LLC, Hahn Investments, LLC, Hahn Hotels, LLC, Sleep Inn Property, LLC, SI of Longview, LLC, and Copeland’s of Longview, LLC, each a Texas limited liability company (collectively, the “**Debtors**”), file this *Motion for Order Authorizing Debtors to Enter Into Listing Agreements and Capital Services Engagement Agreement with Marcus & Millichap* (the “**Motion**”). In support of the Motion, the Debtors respectfully represent as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334(b). This Court can hear and determine this matter in accordance with 28 U.S.C. § 157 and the standing order of reference of bankruptcy cases and proceedings in this District. This matter is a core proceeding, and venue for this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases, including the last four digits of their respective EIN number, are as follows: Hahn Hotels of Sulphur Springs, LLC (2980), Hahn Investments, LLC (0448); Hahn Hotels, LLC (5692), Sleep Inn Property, LLC (6525), SI of Longview, LLC (2196), and Copeland’s of Longview, LLC (6181). The shared mailing address for all Debtors is: 525 Gilmer St., PO Box 113, Sulphur Springs, Texas 75482.

II. Factual and Procedural Background

2. On May 1, 2017 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

3. Each of the Debtors remains in possession of its property and is operating its business as debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner, or committee has been appointed in the Debtors’ cases.

5. A detailed description of the Debtors’ business, capital structure, and the events leading to these chapter 11 cases is fully set forth in the Debtors’ First Day Declaration [Docket No. 7] and is incorporated herein by reference.

6. The Debtors have made substantial progress in their chapter 11 cases, and filed their Joint Chapter 11 Plan of Reorganization on November 1, 2017 [Docket No. 234] (the “**Plan**”). The Debtors plan to exit chapter 11 either at the end of 2017 or the beginning of 2018.

7. In order to raise capital to fund their Plan, the Debtors have determined that it is in the best interests of their creditors and their respective estates that certain real properties belonging to the Debtors (the “**Properties**”), as described more fully on the attached **Exhibit A**, be listed for sale or refinanced.

8. Expedited consideration of this Motion is requested on account of the need to list the Properties for sale (or seek refinancing opportunities) as soon as possible, so as to facilitate their prompt sale or refinancing for the benefit of the Debtors’ estates.

III. Relief Requested and Bases for Relief

9. The Debtors seek authorization under §§ 105 and 363 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) to enter into certain agreements with Marcus & Millichap (Marcus & Millichap Real Estate Investment Services (“**MMREIS**”) to list and market certain of the Properties for sale. The Debtors further seek authorization to enter into an agreement with Marcus & Millichap Capital Corporation (“**MMCC**”, and together with MMREIS, “**Marcus & Millichap**”) to seek financing with prospective lenders and negotiate the terms of financing with prospective lenders for refinancing opportunities with respect to other Properties. In accordance therewith, the Debtors seek to enter into five (5) Listing Agreements (attached hereto as **Exhibit B**) with MMREIS for the listing for sale and marketing of certain Properties, as well as the Limited Capital Services Engagement Agreement (attached hereto as **Exhibit C**) with MMCC for seeking and negotiating term of financing with prospective lenders (together, the Listing Agreements and the Limited Capital Services Engagement Agreement are the “**Agreements**”).

10. Engaging Marcus & Millichap to represent the Debtors in marketing the Properties for sale and seeking out financing opportunities is necessary in these bankruptcy cases to efficiently and effectively bring funds into the estates that will support the repayment of creditors under a chapter 11 plan of reorganization. All creditors and parties in interest stand to benefit from the efficient sale or refinancing of the Properties. Marcus & Millichap bring needed expertise and skills to assist the Debtors in accomplishing these tasks in a cost-effective manner.

11. Marcus & Millichap is a well-known real estate services company and is eminently qualified and capable of carrying out the work for which the Debtors seek to contract. Marcus & Millichap was founded in 1971, and today is the industry’s largest firm specializing in real estate investment sales and financing, as well as a leading source of research and advisory services. One

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of Marcus & Millichap's professionals is Roger Burke, the contact person at Marcus & Millichap with whom the Debtors' financial professionals negotiated the terms and conditions of the proposed Agreements.

12. Roger Burke is an Associate Director in the Fort Worth, Texas office of Marcus & Millichap, where he is responsible for securing commercial debt financing for an array of property types including multifamily, office and industrial, retail, seniors housing and hospitality, and is well connected with national, regional and local funding sources. Mr. Burke has more than 20 years of commercial real estate finance experience and has closed in excess of \$750 million in real estate financings, acquisitions and developments.

13. Prior to joining Marcus & Millichap, Mr. Burke was a Managing Director of Beucler Properties, where he was responsible for structuring debt and equity placement for the development of hotels and industrial properties in the United States and Mexico.

14. The terms and conditions of the proposed Agreements are attached as **Exhibit B** (Listing Agreements) and **Exhibit C** (Limited Capital Services Engagement Agreement) to this Motion.

15. The total cost for the services provided under the Listing Agreements is in the form of commissions from the sales prices of the Properties: four percent (4%) for the hotel properties and five percent (5%) for the mixed-use City Center and Tyler Properties. Such commission will be paid only in the event of a successful closing of the sale of the Properties.

16. The total cost for the services provided under the Limited Capital Services Engagement Agreement is in the form of an origination fee (the "Fee") equal to two percent (2.0%) of the final loan amount in the event that a commitment or proposed note or mortgage is issued.

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Such costs will be directly attributed to the estate(s) of the specific Debtor that owns the specific Property that is being sold or refinanced. The Fee includes all anticipated expenses.

IV. Conclusion

17. Because it is in the best interest of the Debtors' estates, the Court should authorize the Debtors to enter into the proposed Agreements substantially in the forms attached hereto as **Exhibit B** and **Exhibit C** to the Motion.

18. WHEREFORE, the Debtors hereby ask this Court to enter an order (i) granting the foregoing Motion and allowing the Debtors to enter into the Agreements, in substantially the forms attached as **Exhibit B** and **Exhibit C**, with Marcus & Millichap; and (ii) granting such other and further relief to which the Debtors may be entitled.

Respectfully submitted: November 3, 2017

By: /s/Judith W. Ross

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Counsel for Debtors and Debtors in Possession

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Certificate of Service

I certify that on November 3, 2017, I served or caused to be served the foregoing document (i) electronically on the Electronic Case Filing System for the United States Bankruptcy Court for the Eastern District of Texas and (ii) by first class mail on the non-debtor/debtor professional parties listed on the most recent Limited Master Service List filed in these chapter 11 cases [Docket No. 235].

/s/ Rachael L. Smiley
Rachael L. Smiley

EXHIBIT AProperties to be listed for sale:

<u>Debtor</u>	<u>Property Description</u>	<u>Address</u>
Hahn Hotels of Sulphur Springs, LLC	La Quinta Inn and Suites	200 Eaton Drive., Sulphur Springs, TX 75482
Sleep Inn Property, LLC	Sleep Inn Suites	615 City Center Way, Longview, TX 75605
Hahn Hotels, LLC	Hawthorne Suites*	3211 Hotel Way, Longview, TX 75605
Hahn Investments, LLC	City Center MUD	616 City Center Way, Longview, TX 75606
Hahn Investments, LLC	Downtown Mixed-Use Lofts and Commercial	108/110 E. Tyler Street, Longview, TX 75601

*Hawthorne Property to be potentially listed for sale at a later date

Properties proposed to be refinanced:

<u>Debtor</u>	<u>Property Description</u>	<u>Address</u>
Hahn Investments, LLC	Tall Pines Retail Center	100 Tall Pines Ave., Longview, TX 75605
Hahn Investments, LLC	Oakview Villas Townhomes	165, 167, 175, 177, 185, and 187 Oakview Court, Longview, TX 75605
Hahn Investments, LLC	Downtown Mixed-Use Lofts and Restaurants	115 E. Tyler Street, Longview, TX 75601

Marcus & Millichap

REPRESENTATION AGREEMENT (EXCLUSIVE RIGHT TO SELL OR EXCHANGE)

**THIS DOCUMENT IS INTENDED TO BE A LEGALLY BINDING CONTRACT.
PLEASE READ IT CAREFULLY.**

The undersigned (“Seller”), hereby agrees to enter into this Exclusive Right To Sell Or Exchange Representation Agreement (“Agreement”), and hereby employs Marcus & Millichap Real Estate Investment Services (“Agent”), and grants to Agent, for a period of time as set forth herein, the exclusive and irrevocable right and authority to sell or exchange that certain real property La Quinta Inn & Suites-Sulphur Springs, (“Property”), located at 1344 Eaton Drive, Sulphur Springs, TX 75482.

1. **PURCHASE PRICE/TERMS:** Agent is authorized to offer the Property for sale at a gross purchase price of \$4,240,000.00 (Four Million, Two Hundred Forty Thousand Dollars and no/100), in cash, or upon the terms stated in the Financing Addendum attached hereto, if any, or in all cases, upon such other terms and conditions as Seller may approve in writing.

2. **TERM:** This Agreement shall commence on the day this Agreement is executed by Seller (the “Commencement Date”) and shall continue for a period of **Six (6) months** from such date through and including midnight on _____ (the “Original Term”). If an agreement of sale or letter of intent for the sale is executed during the term, the Original Term shall be extended by the number of calendar days during which the sale agreement or letter of intent was in effect (the “Extended Term”). The purpose of this automatic extension is to allow agent the opportunity to expose the Property to the marketplace for the full period of time contemplated by this Agreement. The Original Term, as the same may be extended by the Extended Term, or by any other extensions as set forth herein, or as otherwise may be agreed to by Seller and Agent, shall collectively be referred to herein as the “Term”.

3. **COMMISSION:** In consideration of the services to be rendered by Agent, Seller agrees to pay to Agent a commission equal to **Four Percent (4%)** of the purchase price of the Property (the “Commission”) upon the occurrence of any of the following events:

a. A buyer is procured during the Term who is ready, willing and able to purchase the Property on the terms and conditions set forth herein or on any other terms and conditions acceptable to Seller, who is able to close on the sale of the Property, and the Property is conveyed to such buyer; or

b. The Property is sold, exchanged or otherwise conveyed during the Term, whether by Seller or any other person or entity; or

c. A sale, exchange or other conveyance of the Property is made during the Term, or within nine (9) months after the expiration of the Term to a person or entity with whom Agent has negotiated, or to whose attention the Property has been brought, or who was introduced to Seller as a prospective purchaser (herein, “Prospective Purchaser”), provided that (i) the name of any such person or entity has been submitted to Seller by delivery of a written offer to purchase the Property prior to expiration of the Term, or (ii) written notice has been given to Seller of the name of the Prospective Purchaser within fifteen (15) calendar days after the expiration of the Term. With respect to a sale, exchange or other conveyance to any Prospective Purchaser, Agent shall conclusively be deemed to be the procuring cause. The term “Prospective Purchaser” shall include that person or entity to whose attention Agent has brought the Property, as well as any partnership, joint venture, corporation,

trust or other similar entity which that person or entity represents or in which it holds an ownership or beneficial interest.

d. In the case of any sale accomplished through an escrow, this commission shall be paid at close of escrow, and Agent shall be entitled to make demand of any escrow holder for payment from the proceeds of sale. Seller and Agent agree that if completion of a sale of the Property pursuant to a duly executed purchase agreement is prevented by default of the Buyer, Seller shall be obligated to pay to Agent only an amount equal to one-half of any damages or other monetary compensation collected from said Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected; provided, however, that the amount due Agent shall not exceed the brokerage commission set forth above. The term "Property" shall include any interest therein or in its ownership.

e. If no sale or transfer of the Property is effected within the earlier of a) one (1) year, or b) such other time as is established by the Bankruptcy Court for such contemplated sale, and the Seller determines thereafter to convey the Property to the lender or secured party with a lien on said Property, then the Commission under this Section 3 is hereby waived in full by Agent, and Seller shall not be obligated or liable for the same.

f. In no event will the combined commission paid to Seller's broker and buyer's broker exceed the total Commission recited in this Section 3.

4 **NOTICE OF BROKER LIEN LAW:** The Commission shall be paid at the Closing, and Agent shall be entitled to make demand of any escrow holder or closing attorney for payment from the proceeds of sale. **Seller is hereby advised that pursuant to Chapter 62 of the Texas Property Code (known as the "Broker's and Appraiser's Lien on Commercial Real Estate Act"), Agent is entitled to claim a lien on the Property with regard to the ownership interests of the Seller, a Prospective Purchaser, and a lessor or lessee, for Agent's Commission if Agent has earned the Commission and a notice of lien is recorded and indexed.**

5. **OTHER TERMS AND CONDITIONS:**

a. **Indemnification:** Seller agrees to indemnify and hold Agent harmless from any and all liability, damages, losses, causes of action, or other claims (including reasonable attorneys' fees and other defense costs) solely arising from or asserted in connection with any incomplete or inaccurate information knowingly provided by Seller, or any material information concerning the Property which Seller has knowingly failed to disclose and for any claims against Agent for environmental responsibility with respect to the Property.

b. **Notification of Inquiries:** Seller agrees to promptly refer to Agent all inquiries of anyone interested in the Property or who approaches Seller in any direct or indirect way with respect to the Property. It is understood and agreed that Seller shall provide Agent with fully executed copies of any and all Letters of Intent, Agreements of Sale, Settlement or Closing Statements, and an executed FIRPTA form on or before the Closing date.

c. **Inspections:** Seller agrees that Agent and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property with prospective buyers at reasonable hours. Seller agrees to furnish and make available to Prospective Purchasers all financial data concerning the Property.

6. **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchasers. Agent shall not, however, have authority to bind Seller to any contract or purchase agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for

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confidential information regarding Seller's business or financial condition and the negotiation of the terms of a purchase agreement between Seller and a prospective purchaser, Seller and Agent agree that their relationship is at arm's length.

7. REQUIRED DISCLOSURES:

A. Property Condition: As required by law, Seller and Agent must disclose any known material defect in the Property to a prospective buyer. (*Check (1) or (2) only.*)

(1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement. Seller authorizes Agent to furnish prospective buyers and other brokers with a copy of the Property Condition Statement.

(2) Except as listed below, Seller is not aware of:

- (a) any material defect on the Property or any condition that materially and detrimentally affects the Property;
- (b) any condition on the Property that violates any law or ordinance;
- (c) whether any part of the Property lies in a flood hazard area;
- (d) any environmental hazards or conditions that affect the Property;
- (e) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground storage tanks or containers;
- (f) whether radon, asbestos insulation or fireproofing, urea-formaldehyde foam insulation, lead-based paint, or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
- (g) whether wetlands as defined by federal or state law or regulation are on the Property; and
- (h) whether threatened or endangered species or their habitat are on the Property.

Exceptions:

N/A

B. Accuracy of Required Disclosures: Seller represents that Seller has disclosed all known material defects and material facts affecting the Property.

8. AGENCY RELATIONSHIPS:

A. Seller acknowledges receipt of the attached exhibit entitled "Information About Brokerage Services" which is incorporated in this Listing for all purposes.

B. Agent will exclusively represent Seller in negotiations for the sale of the Property unless Seller authorizes Agent, as set forth below, to act as an intermediary or a dual agent in the event Agent also represents a Buyer who offers to purchase the Property. (*Check (1) or (2) only.*)

(1) Intermediary Relationship Authorized: Seller acknowledges and desires for Agent to show the Property to all prospective Buyers it feels are qualified in order to maximize the exposure regardless of who represents the Buyer. Specifically, Seller authorizes Agent to show the Property to prospective buyers Agent has or may agree to represent. As required by Texas law, if Agent represents a Buyer who offers to buy the Property, Seller

must authorize Agent to act as an intermediary between the Buyer and Seller, to present any offer such buyer may wish to make, and to assist both Seller and Buyer in negotiations for the sale of the Property. (Agent recommends that Seller choose this option so that Seller's property may be marketed to all clients who may be interested in buying Seller's property. Without authorization, Agent will likely not be able to show to all Buyers.)

As required by law, if Agent acts as an intermediary between Seller and a Buyer, Agent:

- (a) may not disclose to the Buyer that Seller will accept a price less than the asking price (Listing Price) unless otherwise instructed in a separate writing by Seller;**
- (b) may not disclose to Seller that the Buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the Buyer;**
- (c) may not disclose any confidential information or any information Seller or Buyer specifically instructs Agent in writing not to disclose unless otherwise instructed in a separate writing by the respective party, or the information materially relates to the condition of the Property, or Agent is required to disclose the information by a court order or by the Real Estate License Act;**
- (d) shall treat all parties to the transaction honestly; and**
- (e) shall comply with the Real Estate License Act.**

If Agent acts as an intermediary, Agent may appoint a licensed associates(s) of Agent to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller and appoint another licensed associate(s) for the same purposes to a Buyer.

____ (2) Intermediary Relationship not Authorized: Agent will exclusively represent Seller and may not act as an intermediary between Seller and a Buyer. Seller understands: (Check (a) or (b) only) (Agent does not recommend that Seller choose this option in that Seller's property cannot be widely marketed to Agent's large database of Buyer clients who may be interested in buying Seller's property, doing so could violate Texas Agency Law..)

- ____ (a) Agent exclusively represents sellers and does not represent Buyers.
- ____ (b) Agent represents both Buyers and Sellers, but Agent will not show the Property to any Buyer Agent represents.

C. During the term of this Listing or after its termination, Agent may not knowingly disclose information obtained in confidence from Seller, except as authorized by Seller or required by law. Agent may not disclose to Seller any information obtained in confidence regarding any other person Agent represents or may have represented, except as required by law.

9. **AFFILIATED BROKERS:** Agent is affiliated with other Marcus & Millichap brokerage companies in other states. Agent shall disseminate information about the Property to such affiliated brokers, inviting the submission of offers on the Property. Seller authorizes Agent and any affiliated broker to represent any prospective buyer in the acquisition of the Property, and to submit offers on behalf of such buyers. Seller understands that this authorization may result in Agent's representing both Seller and a prospective buyer, and Seller hereby authorizes and consents to such intermediary relationship and agrees to execute a confirmation of such disclosed intermediary relationship if prospective purchaser is already represented by an affiliated entity. Agent reserves the right to cooperate or not cooperate with other brokers. Agent reserves this right in an effort to minimize unauthorized showings and unnecessary disclosures of Property.

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10. **SELLER'S REPRESENTATIONS:** Except as provided in Paragraph 7, Seller represents and warrants that:

- A. Fee title to the Property is now vested as follows: Hahn Hotels of Sulphur Springs, LLC;
- B. the undersigned Seller has the legal right to sell the Property and to bind any other individuals and entities that may have an ownership interest in the Property, subject to Bankruptcy Court approval;
- C. the execution of this Agreement shall not result in any knowing breach of, or constitute a default under, any contract or other agreement to which Seller is a part;
- D. Seller is not now a party to a listing agreement with another broker for the sale, exchange, or lease of the Property;
- E. no person or entity has any right to purchase, lease, or acquire the Property by virtue of an option, right of first refusal, or other agreement;
- G. this Agreement is not binding until approved by the United States Bankruptcy Court for the Eastern District of Texas; and
- H. all information relating to the Property provided to Agent by Seller is true and correct.

11. **SELLER'S ADDITIONAL PROMISES:** Seller agrees to:

- A. cooperate fully in good faith with Agent to facilitate the showing and marketing of the Property;
- B. refer all prospective buyers to Agent and not negotiate with any prospective buyer directly;
- C. not enter into a listing agreement for the sale or exchange of the Property with another broker to become effective during the term of this Listing;
- D. provide Agent with copies of a current rent roll, all leases including any amendments, architectural plans and drawings, and a current operating statement, if any pertaining to the Property and
- E. advise Agent of any tenants moving in or out of the property.

12. **ENTIRE AGREEMENT:** This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

13. **NOTICES:**

- A. **Agent is obligated under law to show and make the Property available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g. creed, status as a student, marital status, sexual orientation, or age).**
- B. **Unless expressly agreed otherwise, Agent will submit all offers received by Agent for the sale of the Property, including any back-up offers Agent receives after Seller has entered into a binding contract to sell the Property. Agent is not obligated to continue to market the Property after seller has entered into a binding contract to sell the Property, unless specifically requested by Seller in writing.**
- C. **If the Property contains any residential dwelling built before 1978, federal law requires that before a buyer is obligated to purchase the Property, the Seller will: (1) provide the buyer with a lead hazard information pamphlet (as prescribed by EPA); and (2) disclose the presence of any known lead-based paint or lead-based paint hazards.**
- D. **Agent cannot give legal advice. This is intended to be legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

- E. Seller understands and acknowledges that broker is not qualified to provide, and has not been contracted to provide legal, financial or tax advice, and that any such advice must be obtained from seller's attorney, accountant or tax professional.**

14. ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL: All disputes arising between the Parties with respect to the subject matter of this Representation Agreement (including but not limited to the payment of commissions as provided herein) shall be settled exclusively by final, binding arbitration. The judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

The arbitration will proceed in the county where Agent's office is located and be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's then-applicable Commercial Arbitration Rules (the "Rules"). Any party who fails or refuses to submit to arbitration following a demand by the other party shall bear all costs and expenses, including attorneys' fees, incurred by such other party in compelling arbitration.

The arbitration will be decided by a single arbitrator selected according to the Rules. The arbitrator will decide any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication and may grant any remedy or relief that a court could order or grant on similar motions. The arbitrator shall apply the provisions of this Representation Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof.

In any arbitration proceeding discovery will be permitted only in accordance with the terms of this paragraph. Discovery by each party shall be limited to: (i) a maximum number of five (5) depositions limited to four hours each; (ii) requests for production of documents; (iii) two interrogatories: one inquiring into the amount of damages sought by the other party and another into the calculation of those damages; and (iv) subpoenas upon third parties for production of documents, depositions, and to appear at a hearing. The scope of discovery may be expanded only upon the mutual consent of the parties. Discovery not set forth in this paragraph shall not be permitted.

The Parties understand and agree that they are entering into this arbitration agreement voluntarily, and that by doing so they are waiving their rights to a jury trial or to have their claims otherwise litigated in court.

15. ATTORNEYS' FEES: In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs and expenses, including costs and expenses of arbitration, court costs and expenses incurred on appeal, and reasonable attorneys' fees incurred in any dispute through arbitration and appeal of and final judgment in addition to any other relief to which such party may be entitled.

16. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

17. SEVERABILITY: In the event any term or provision of this Agreement shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

18. ADDENDA: Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature

EXHIBIT B

whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

SELLER: Hahn Hotels of Sulphur Springs, LLC

ADDRESS: PO Box 351

Judson, TX 75660

DATE: _____

BY: _____

SELLER: Mr. Dante Hahn, Presidente

AGENT: **MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES**

BY: _____

DATE: _____

READ AND APPROVED:

BY: _____

Regional Manager
Marcus & Millichap Real Estate Investment Services

DATE: _____



Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about Brokerage services to prospective buyers, tenants, seller and landlords.

TYPES OF REAL ESTATE LICENSE HOLDERS:

- **A BROKER** is responsible for all brokerage activities including acts performed by sales agents sponsored by the broker.
- **A SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

AS AGENT FOR OWNER (SELLER/LANDLORD): The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

AS AGENT FOR BOTH – INTERMEDIARY: To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with provide opinions and advice to, and carry out the instructions of each party to the transaction;
- Must not, unless specifically authorized in writing to do so by the party, disclose:
 - That the owner will accept a price less than the written asking price;
 - That the buyer/tenant will pay a price greater than the price submitted in a written offer; and
 - Any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

AS SUBAGENT: A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must palce the interest of the owner first.

TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

<u>Marcus & Millichap</u> Licensed Broker/Broker Firm Name or Primary Assumed Business Name	<u>9002994</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Tim A. Speck</u> Designated Broker or Firm	<u>432723</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Lisa W. Hankamer</u> Licensed Supervisor of Sales Agent/ Associate	<u>439036</u> License No.	<u>Lisa.Hankamer@marcusmillichap.com</u> Email Address	<u>713.452.4247</u> Phone
_____ Sales Agent/Associate's Name	_____ License No.	_____ Email Address	_____ Phone
_____ Buyer/Tenant/Seller/Landlord Initials	_____ Date		

Marcus & Millichap

REPRESENTATION AGREEMENT (EXCLUSIVE RIGHT TO SELL OR EXCHANGE)

**THIS DOCUMENT IS INTENDED TO BE A LEGALLY BINDING CONTRACT.
PLEASE READ IT CAREFULLY.**

The undersigned (“Seller”), hereby agrees to enter into this Exclusive Right To Sell Or Exchange Representation Agreement (“Agreement”), and hereby employs Marcus & Millichap Real Estate Investment Services (“Agent”), and grants to Agent, for a period of time as set forth herein, the exclusive and irrevocable right and authority to sell or exchange that certain real property Sleep Inn & Suites-Longview, (“Property”), located at 615 City Center Way, Longview, TX 75605.

1. **PURCHASE PRICE/TERMS:** Agent is authorized to offer the Property for sale at a gross purchase price of \$4,240,000.00 (Four Million, Two Hundred Forty Thousand Dollars and no/100), in cash, or upon the terms stated in the Financing Addendum attached hereto, if any, or in all cases, upon such other terms and conditions as Seller may approve in writing, and subject to approval by First National Bank of Hughes Springs (“Bank”).

2. **TERM:** This Agreement shall commence on the day this Agreement is executed by Seller (the “Commencement Date”) and shall continue for a period of **Six (6) months** from such date through and including midnight on _____ (the “Original Term”). If an agreement of sale or letter of intent for the sale is executed during the term, the Original Term shall be extended by the number of calendar days during which the sale agreement or letter of intent was in effect (the “Extended Term”). The purpose of this automatic extension is to allow agent the opportunity to expose the Property to the marketplace for the full period of time contemplated by this Agreement. The Original Term, as the same may be extended by the Extended Term, or by any other extensions as set forth herein, or as otherwise may be agreed to by Seller and Agent, shall collectively be referred to herein as the “Term”.

3. **COMMISSION:** In consideration of the services to be rendered by Agent, Seller agrees to pay to Agent a commission equal to **Four Percent (4%)** of the purchase price of the Property (the “Commission”) upon the occurrence of any of the following events:

a. A buyer is procured during the Term who is ready, willing and able to purchase the Property on the terms and conditions set forth herein or on any other terms and conditions acceptable to Seller, who is able to close on the sale of the Property, and the Property is conveyed to such buyer; or

b. The Property is sold, exchanged or otherwise conveyed during the Term, whether by Seller or any other person or entity; or

c. A sale, exchange or other conveyance of the Property is made during the Term, or within nine (9) months after the expiration of the Term to a person or entity with whom Agent has negotiated, or to whose attention the Property has been brought, or who was introduced to Seller as a prospective purchaser (herein, “Prospective Purchaser”), provided that (i) the name of any such person or entity has been submitted to Seller by delivery of a written offer to purchase the Property prior to expiration of the Term, or (ii) written notice has been given to Seller of the name of the Prospective Purchaser within fifteen (15) calendar days after the expiration of the Term. With respect to a sale, exchange or other conveyance to any Prospective Purchaser, Agent shall conclusively be deemed to be the procuring cause. The term “Prospective Purchaser” shall include that person or entity to whose attention Agent has brought the Property, as well as any partnership, joint venture, corporation,

trust or other similar entity which that person or entity represents or in which it holds an ownership or beneficial interest.

d. In the case of any sale accomplished through an escrow, this commission shall be paid at close of escrow, and Agent shall be entitled to make demand of any escrow holder for payment from the proceeds of sale. Seller and Agent agree that if completion of a sale of the Property pursuant to a duly executed purchase agreement is prevented by default of the Buyer, Seller shall be obligated to pay to Agent only an amount equal to one-half of any damages or other monetary compensation collected from said Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected; provided, however, that the amount due Agent shall not exceed the brokerage commission set forth above. The term "Property" shall include any interest therein or in its ownership.

e. If no sale or transfer of the Property is effected within the earlier of a) one (1) year, or b) such other time as is established by the Bankruptcy Court for such contemplated sale, and the Seller determines thereafter to convey the Property to the lender or secured party with a lien on said Property, then the Commission under this Section 3 is hereby waived in full by Agent, and Seller shall not be obligated or liable for the same.

f. In no event will the combined commission paid to Seller's broker and buyer's broker exceed the total Commission recited in this Section 3.

4 **NOTICE OF BROKER LIEN LAW:** The Commission shall be paid at the Closing, and Agent shall be entitled to make demand of any escrow holder or closing attorney for payment from the proceeds of sale. **Seller is hereby advised that pursuant to Chapter 62 of the Texas Property Code (known as the "Broker's and Appraiser's Lien on Commercial Real Estate Act"), Agent is entitled to claim a lien on the Property with regard to the ownership interests of the Seller, a Prospective Purchaser, and a lessor or lessee, for Agent's Commission if Agent has earned the Commission and a notice of lien is recorded and indexed.**

5. **OTHER TERMS AND CONDITIONS:**

a. **Indemnification:** Seller agrees to indemnify and hold Agent harmless from any and all liability, damages, losses, causes of action, or other claims (including reasonable attorneys' fees and other defense costs) solely arising from or asserted in connection with any incomplete or inaccurate information knowingly provided by Seller, or any material information concerning the Property which Seller has knowingly failed to disclose and for any claims against Agent for environmental responsibility with respect to the Property.

b. **Notification of Inquiries:** Seller agrees to promptly refer to Agent all inquiries of anyone interested in the Property or who approaches Seller in any direct or indirect way with respect to the Property. It is understood and agreed that Seller shall provide Agent with fully executed copies of any and all Letters of Intent, Agreements of Sale, Settlement or Closing Statements, and an executed FIRPTA form on or before the Closing date.

c. **Inspections:** Seller agrees that Agent and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property with prospective buyers at reasonable hours. Seller agrees to furnish and make available to Prospective Purchasers all financial data concerning the Property.

6. **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchasers. Agent shall not, however, have authority to bind Seller to any contract or purchase agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for confidential information regarding Seller's business or financial condition and the negotiation of the terms of a

purchase agreement between Seller and a prospective purchaser, Seller and Agent agree that their relationship is at arm's length.

7. **REQUIRED DISCLOSURES:**

A. Property Condition: As required by law, Seller and Agent must disclose any known material defect in the Property to a prospective buyer. (Check (1) or (2) only.)

(1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement. Seller authorizes Agent to furnish prospective buyers and other brokers with a copy of the Property Condition Statement.

(2) Except as listed below, Seller is not aware of:

- (a) any material defect on the Property or any condition that materially and detrimentally affects the Property;
- (b) any condition on the Property that violates any law or ordinance;
- (c) whether any part of the Property lies in a flood hazard area;
- (d) any environmental hazards or conditions that affect the Property;
- (e) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground storage tanks or containers;
- (f) whether radon, asbestos insulation or fireproofing, urea-formaldehyde foam insulation, lead-based paint, or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
- (g) whether wetlands as defined by federal or state law or regulation are on the Property; and
- (h) whether threatened or endangered species or their habitat are on the Property.

Exceptions:

_____ N/A _____

B. Accuracy of Required Disclosures: Seller represents that Seller has disclosed all known material defects and material facts affecting the Property.

8. **AGENCY RELATIONSHIPS:**

A. Seller acknowledges receipt of the attached exhibit entitled "Information About Brokerage Services" which is incorporated in this Listing for all purposes.

B. Agent will exclusively represent Seller in negotiations for the sale of the Property unless Seller authorizes Agent, as set forth below, to act as an intermediary or a dual agent in the event Agent also represents a Buyer who offers to purchase the Property. (Check (1) or (2) only.)

(1) Intermediary Relationship Authorized: Seller acknowledges and desires for Agent to show the Property to all prospective Buyers it feels are qualified in order to maximize the exposure regardless of who represents the Buyer. Specifically, Seller authorizes Agent to show the Property to prospective buyers Agent has or may agree to represent. As required by Texas law, if Agent represents a Buyer who offers to buy the Property, Seller must authorize Agent to act as an intermediary between the Buyer and Seller, to present

any offer such buyer may wish to make, and to assist both Seller and Buyer in negotiations for the sale of the Property. (*Agent recommends that Seller choose this option so that Seller's property may be marketed to all clients who may be interested in buying Seller's property. Without authorization, Agent will likely not be able to show to all Buyers.*)

As required by law, if Agent acts as an intermediary between Seller and a Buyer, Agent:

- (a) may not disclose to the Buyer that Seller will accept a price less than the asking price (Listing Price) unless otherwise instructed in a separate writing by Seller;
- (b) may not disclose to Seller that the Buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the Buyer;
- (c) may not disclose any confidential information or any information Seller or Buyer specifically instructs Agent in writing not to disclose unless otherwise instructed in a separate writing by the respective party, or the information materially relates to the condition of the Property, or Agent is required to disclose the information by a court order or by the Real Estate License Act;
- (d) shall treat all parties to the transaction honestly; and
- (e) shall comply with the Real Estate License Act.

If Agent acts as an intermediary, Agent may appoint a licensed associates(s) of Agent to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller and appoint another licensed associate(s) for the same purposes to a Buyer.

____ (2) Intermediary Relationship not Authorized: Agent will exclusively represent Seller and may not act as an intermediary between Seller and a Buyer. Seller understands: (*Check (a) or (b) only*) (*Agent does not recommend that Seller choose this option in that Seller's property cannot be widely marketed to Agent's large database of Buyer clients who may be interested in buying Seller's property, doing so could violate Texas Agency Law..*)

- ____ (a) Agent exclusively represents sellers and does not represent Buyers.
- ____ (b) Agent represents both Buyers and Sellers, but Agent will not show the Property to any Buyer Agent represents.

C. During the term of this Listing or after its termination, Agent may not knowingly disclose information obtained in confidence from Seller, except as authorized by Seller or required by law. Agent may not disclose to Seller any information obtained in confidence regarding any other person Agent represents or may have represented, except as required by law.

9. **AFFILIATED BROKERS:** Agent is affiliated with other Marcus & Millichap brokerage companies in other states. Agent shall disseminate information about the Property to such affiliated brokers, inviting the submission of offers on the Property. Seller authorizes Agent and any affiliated broker to represent any prospective buyer in the acquisition of the Property, and to submit offers on behalf of such buyers. Seller understands that this authorization may result in Agent's representing both Seller and a prospective buyer, and Seller hereby authorizes and consents to such intermediary relationship and agrees to execute a confirmation of such disclosed intermediary relationship if prospective purchaser is already represented by an affiliated entity. Agent reserves the right to cooperate or not cooperate with other brokers. Agent reserves this right in an effort to minimize unauthorized showings and unnecessary disclosures of Property.

10. **SELLER'S REPRESENTATIONS:** Except as provided in Paragraph 7, Seller represents and warrants that:

- A. Fee title to the Property is now vested as follows: Sleep Inn Property, LLC;
- B. the undersigned Seller has the legal right to sell the Property and to bind any other individuals and entities that may have an ownership interest in the Property, subject to Bankruptcy Court approval;
- C. the execution of this Agreement shall not result in any knowing breach of, or constitute a default under, any contract or other agreement to which Seller is a part;
- D. Seller is not now a party to a listing agreement with another broker for the sale, exchange, or lease of the Property;
- E. no person or entity has any right to purchase, lease, or acquire the Property by virtue of an option, right of first refusal, or other agreement;
- F.
- G. this Agreement is not binding until approved by the United States Bankruptcy Court for the Eastern District of Texas; and
- H. all information relating to the Property provided to Agent by Seller is true and correct.

11. **SELLER'S ADDITIONAL PROMISES:** Seller agrees to:

- A. cooperate fully in good faith with Agent to facilitate the showing and marketing of the Property;
- B. refer all prospective buyers to Agent and not negotiate with any prospective buyer directly;
- C. not enter into a listing agreement for the sale or exchange of the Property with another broker to become effective during the term of this Listing;
- D. provide Agent with copies of a current rent roll, all leases including any amendments, architectural plans and drawings, and a current operating statement, if any pertaining to the Property and
- E. advise Agent of any tenants moving in or out of the property.

12. **ENTIRE AGREEMENT:** This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

13. **NOTICES:**

- A. **Agent is obligated under law to show and make the Property available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g. creed, status as a student, marital status, sexual orientation, or age).**
- B. **Unless expressly agreed otherwise, Agent will submit all offers received by Agent for the sale of the Property, including any back-up offers Agent receives after Seller has entered into a binding contract to sell the Property. Agent is not obligated to continue to market the Property after seller has entered into a binding contract to sell the Property, unless specifically requested by Seller in writing.**
- C. **If the Property contains any residential dwelling built before 1978, federal law requires that before a buyer is obligated to purchase the Property, the Seller will: (1) provide the buyer with a lead hazard information pamphlet (as prescribed by EPA); and (2) disclose the presence of any known lead-based paint or lead-based paint hazards.**
- D. **Agent cannot give legal advice. This is intended to be legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

EXHIBIT B
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E. Seller understands and acknowledges that broker is not qualified to provide, and has not been contracted to provide legal, financial or tax advice, and that any such advice must be obtained from seller's attorney, accountant or tax professional.

14. ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL: All disputes arising between the Parties with respect to the subject matter of this Representation Agreement (including but not limited to the payment of commissions as provided herein) shall be settled exclusively by final, binding arbitration. The judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

The arbitration will proceed in the county where Agent's office is located and be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's then-applicable Commercial Arbitration Rules (the "Rules"). Any party who fails or refuses to submit to arbitration following a demand by the other party shall bear all costs and expenses, including attorneys' fees, incurred by such other party in compelling arbitration.

The arbitration will be decided by a single arbitrator selected according to the Rules. The arbitrator will decide any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication and may grant any remedy or relief that a court could order or grant on similar motions. The arbitrator shall apply the provisions of this Representation Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof.

In any arbitration proceeding discovery will be permitted only in accordance with the terms of this paragraph. Discovery by each party shall be limited to: (i) a maximum number of five (5) depositions limited to four hours each; (ii) requests for production of documents; (iii) two interrogatories: one inquiring into the amount of damages sought by the other party and another into the calculation of those damages; and (iv) subpoenas upon third parties for production of documents, depositions, and to appear at a hearing. The scope of discovery may be expanded only upon the mutual consent of the parties. Discovery not set forth in this paragraph shall not be permitted.

The Parties understand and agree that they are entering into this arbitration agreement voluntarily, and that by doing so they are waiving their rights to a jury trial or to have their claims otherwise litigated in court.

15. ATTORNEYS' FEES: In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs and expenses, including costs and expenses of arbitration, court costs and expenses incurred on appeal, and reasonable attorneys' fees incurred in any dispute through arbitration and appeal of and final judgment in addition to any other relief to which such party may be entitled.

16. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

17. SEVERABILITY: In the event any term or provision of this Agreement shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

18. ADDENDA: Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature

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whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

SELLER: Sleep Inn Property, LLC
ADDRESS: PO Box 351
Judson, TX 75660
DATE: _____

BY: _____
SELLER: Mr. Dante Hahn, Presidenteent

AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES

BY: _____ DATE: _____

READ AND APPROVED:

BY: _____ DATE: _____
Regional Manager
Marcus & Millichap Real Estate Investment Services



Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about Brokerage services to prospective buyers, tenants, seller and landlords.

TYPES OF REAL ESTATE LICENSE HOLDERS:

- **A BROKER** is responsible for all brokerage activities including acts performed by sales agents sponsored by the broker.
- **A SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

AS AGENT FOR OWNER (SELLER/LANDLORD): The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

AS AGENT FOR BOTH – INTERMEDIARY: To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with provide opinions and advice to, and carry out the instructions of each party to the transaction;
- Must not, unless specifically authorized in writing to do so by the party, disclose:
 - That the owner will accept a price less than the written asking price;
 - That the buyer/tenant will pay a price greater than the price submitted in a written offer; and
 - Any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

AS SUBAGENT: A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must palce the interest of the owner first.

TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

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<u>Marcus & Millichap</u> Licensed Broker/Broker Firm Name or Primary Assumed Business Name	<u>9002994</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Tim A. Speck</u> Designated Broker or Firm	<u>432723</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Lisa W. Hankamer</u> Licensed Supervisor of Sales Agent/ Associate	<u>439036</u> License No.	<u>Lisa.Hankamer@marcusmillichap.com</u> Email Address	<u>713.452.4247</u> Phone
_____ Sales Agent/Associate's Name	_____ License No.	_____ Email Address	_____ Phone
_____ Buyer/Tenant/Seller/Landlord Initials	_____ Date		

Marcus & Millichap

REPRESENTATION AGREEMENT (EXCLUSIVE RIGHT TO SELL OR EXCHANGE)

**THIS DOCUMENT IS INTENDED TO BE A LEGALLY BINDING CONTRACT.
PLEASE READ IT CAREFULLY.**

The undersigned (“Seller”), hereby agrees to enter into this Exclusive Right to Sell or Exchange Representation Agreement (“Agreement”), and hereby employs Marcus & Millichap Real Estate Investment Services (“Agent”), and grants to Agent, for a period of time as set forth herein, the exclusive and irrevocable right and authority to sell or exchange that certain real property **Hawthorne Suites-Longview**, (“Property”), located at 3211 Hotel Way, Longview, TX, 75605.

1. **PURCHASE PRICE/TERMS:** Agent is authorized to offer the Property for sale at a gross purchase price of **\$5,230,000.00 (Five Million, Two Hundred Thirty Thousand Dollars and no/100)**, in cash, or upon the terms stated in the Financing Addendum attached hereto, if any, or in all cases, upon such other terms and conditions as Seller may approve in writing.

2. **TERM:** This Agreement shall commence on the day this Agreement is executed by Seller (the “Commencement Date”) and shall continue for a period of **Six (6) months** from such date through and including midnight on _____ (the “Original Term”). If an agreement of sale or letter of intent for the sale is executed during the term, the Original Term shall be extended by the number of calendar days during which the sale agreement or letter of intent was in effect (the “Extended Term”). The purpose of this automatic extension is to allow agent the opportunity to expose the Property to the marketplace for the full period of time contemplated by this Agreement. The Original Term, as the same may be extended by the Extended Term, or by any other extensions as set forth herein, or as otherwise may be agreed to by Seller and Agent, shall collectively be referred to herein as the “Term”.

3. **COMMISSION:** In consideration of the services to be rendered by Agent, Seller agrees to pay to Agent a commission equal to **Four Percent (4%)** of the purchase price of the Property (the “Commission”) upon the occurrence of any of the following events:

a. A buyer is procured during the Term who is ready, willing and able to purchase the Property on the terms and conditions set forth herein or on any other terms and conditions acceptable to Seller, who is able to close on the sale of the Property, and the Property is conveyed to such buyer; or

b. The Property is sold, exchanged or otherwise conveyed during the Term, whether by Seller or any other person or entity; or

c. A sale, exchange or other conveyance of the Property is made during the Term, or within nine (9) months after the expiration of the Term to a person or entity with whom Agent has negotiated, or to whose attention the Property has been brought, or who was introduced to Seller as a prospective purchaser (herein, “Prospective Purchaser”), provided that (i) the name of any such person or entity has been submitted to Seller by delivery of a written offer to purchase the Property prior to expiration of the Term, or (ii) written notice has been given to Seller of the name of the Prospective Purchaser within fifteen (15) calendar days after the expiration of the Term. With respect to a sale, exchange or other conveyance to any Prospective Purchaser, Agent shall conclusively be deemed to be the procuring cause. The term “Prospective Purchaser” shall include that person or entity to whose attention Agent has brought the Property, as well as any partnership, joint venture, corporation,

trust or other similar entity which that person or entity represents or in which it holds an ownership or beneficial interest.

d. In the case of any sale accomplished through an escrow, this commission shall be paid at close of escrow, and Agent shall be entitled to make demand of any escrow holder for payment from the proceeds of sale. Seller and Agent agree that if completion of a sale of the Property pursuant to a duly executed purchase agreement is prevented by default of the Buyer, Seller shall be obligated to pay to Agent only an amount equal to one-half of any damages or other monetary compensation collected from said Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected; provided, however, that the amount due Agent shall not exceed the brokerage commission set forth above. The term "Property" shall include any interest therein or in its ownership.

e. If no sale or transfer of the Property is effected within the earlier of a) one (1) year, or b) such other time as is established by the Bankruptcy Court for such contemplated sale, and the Seller determines thereafter to convey the Property to the lender or secured party with a lien on said Property, then the Commission under this Section 3 is hereby waived in full by Agent, and Seller shall not be obligated or liable for the same.

f. In no event will the combined commission paid to Seller's broker and buyer's broker exceed the total Commission recited in this Section 3.

4 **NOTICE OF BROKER LIEN LAW:** The Commission shall be paid at the Closing, and Agent shall be entitled to make demand of any escrow holder or closing attorney for payment from the proceeds of sale. **Seller is hereby advised that pursuant to Chapter 62 of the Texas Property Code (known as the "Broker's and Appraiser's Lien on Commercial Real Estate Act"), Agent is entitled to claim a lien on the Property with regard to the ownership interests of the Seller, a Prospective Purchaser, and a lessor or lessee, for Agent's Commission if Agent has earned the Commission and a notice of lien is recorded and indexed.**

5. **OTHER TERMS AND CONDITIONS:**

a. **Indemnification:** Seller agrees to indemnify and hold Agent harmless from any and all liability, damages, losses, causes of action, or other claims (including reasonable attorneys' fees and other defense costs) solely arising from or asserted in connection with any incomplete or inaccurate information knowingly provided by Seller, or any material information concerning the Property which Seller has knowingly failed to disclose and for any claims against Agent for environmental responsibility with respect to the Property.

b. **Notification of Inquiries:** Seller agrees to promptly refer to Agent all inquiries of anyone interested in the Property or who approaches Seller in any direct or indirect way with respect to the Property. It is understood and agreed that Seller shall provide Agent with fully executed copies of any and all Letters of Intent, Agreements of Sale, Settlement or Closing Statements, and an executed FIRPTA form on or before the Closing date.

c. **Inspections:** Seller agrees that Agent and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property with prospective buyers at reasonable hours. Seller agrees to furnish and make available to Prospective Purchasers all financial data concerning the Property.

6. **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchasers. Agent shall not, however, have authority to bind Seller to any contract or purchase agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for

must authorize Agent to act as an intermediary between the Buyer and Seller, to present any offer such buyer may wish to make, and to assist both Seller and Buyer in negotiations for the sale of the Property. (*Agent recommends that Seller choose this option so that Seller's property may be marketed to all clients who may be interested in buying Seller's property. Without authorization, Agent will likely not be able to show to all Buyers.*)

As required by law, if Agent acts as an intermediary between Seller and a Buyer, Agent:

- (a) may not disclose to the Buyer that Seller will accept a price less than the asking price (Listing Price) unless otherwise instructed in a separate writing by Seller;**
- (b) may not disclose to Seller that the Buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the Buyer;**
- (c) may not disclose any confidential information or any information Seller or Buyer specifically instructs Agent in writing not to disclose unless otherwise instructed in a separate writing by the respective party, or the information materially relates to the condition of the Property, or Agent is required to disclose the information by a court order or by the Real Estate License Act;**
- (d) shall treat all parties to the transaction honestly; and**
- (e) shall comply with the Real Estate License Act.**

If Agent acts as an intermediary, Agent may appoint a licensed associates(s) of Agent to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller and appoint another licensed associate(s) for the same purposes to a Buyer.

____ (2) Intermediary Relationship not Authorized: Agent will exclusively represent Seller and may not act as an intermediary between Seller and a Buyer. Seller understands: (*Check (a) or (b) only*) (*Agent does not recommend that Seller choose this option in that Seller's property cannot be widely marketed to Agent's large database of Buyer clients who may be interested in buying Seller's property, doing so could violate Texas Agency Law..*)

- ____ (a) Agent exclusively represents sellers and does not represent Buyers.
- ____ (b) Agent represents both Buyers and Sellers, but Agent will not show the Property to any Buyer Agent represents.

C. During the term of this Listing or after its termination, Agent may not knowingly disclose information obtained in confidence from Seller, except as authorized by Seller or required by law. Agent may not disclose to Seller any information obtained in confidence regarding any other person Agent represents or may have represented, except as required by law.

9. **AFFILIATED BROKERS:** Agent is affiliated with other Marcus & Millichap brokerage companies in other states. Agent shall disseminate information about the Property to such affiliated brokers, inviting the submission of offers on the Property. Seller authorizes Agent and any affiliated broker to represent any prospective buyer in the acquisition of the Property, and to submit offers on behalf of such buyers. Seller understands that this authorization may result in Agent's representing both Seller and a prospective buyer, and Seller hereby authorizes and consents to such intermediary relationship and agrees to execute a confirmation of such disclosed intermediary relationship if prospective purchaser is already represented by an affiliated entity. Agent reserves the right to cooperate or not cooperate with other brokers. Agent reserves this right in an effort to minimize unauthorized showings and unnecessary disclosures of Property.

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10. **SELLER'S REPRESENTATIONS:** Except as provided in Paragraph 7, Seller represents and warrants that:

- A. Fee title to the Property is now vested as follows: Hahn Hotels, LLC ;
- B. the undersigned Seller has the legal right to sell the Property and to bind any other individuals and entities that may have an ownership interest in the Property, subject to Bankruptcy Court approval;
- C. the execution of this Agreement shall not result in any knowing breach of, or constitute a default under, any contract or other agreement to which Seller is a part;
- D. Seller is not now a party to a listing agreement with another broker for the sale, exchange, or lease of the Property;
- E. no person or entity has any right to purchase, lease, or acquire the Property by virtue of an option, right of first refusal, or other agreement;
- G. this Agreement is not binding until approved by the United States Bankruptcy Court for the Eastern District of Texas; and
- H. all information relating to the Property provided to Agent by Seller is true and correct.

11. **SELLER'S ADDITIONAL PROMISES:** Seller agrees to:

- A. cooperate fully in good faith with Agent to facilitate the showing and marketing of the Property;
- B. refer all prospective buyers to Agent and not negotiate with any prospective buyer directly;
- C. not enter into a listing agreement for the sale or exchange of the Property with another broker to become effective during the term of this Listing;
- D. provide Agent with copies of a current rent roll, all leases including any amendments, architectural plans and drawings, and a current operating statement, if any pertaining to the Property and
- E. advise Agent of any tenants moving in or out of the property.

12. **ENTIRE AGREEMENT:** This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

13. **NOTICES:**

- A. **Agent is obligated under law to show and make the Property available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g. creed, status as a student, marital status, sexual orientation, or age).**
- B. **Unless expressly agreed otherwise, Agent will submit all offers received by Agent for the sale of the Property, including any back-up offers Agent receives after Seller has entered into a binding contract to sell the Property. Agent is not obligated to continue to market the Property after seller has entered into a binding contract to sell the Property, unless specifically requested by Seller in writing.**
- C. **If the Property contains any residential dwelling built before 1978, federal law requires that before a buyer is obligated to purchase the Property, the Seller will: (1) provide the buyer with a lead hazard information pamphlet (as prescribed by EPA); and (2) disclose the presence of any known lead-based paint or lead-based paint hazards.**
- D. **Agent cannot give legal advice. This is intended to be legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

- E. Seller understands and acknowledges that broker is not qualified to provide, and has not been contracted to provide legal, financial or tax advice, and that any such advice must be obtained from seller's attorney, accountant or tax professional.**

14. ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL: All disputes arising between the Parties with respect to the subject matter of this Representation Agreement (including but not limited to the payment of commissions as provided herein) shall be settled exclusively by final, binding arbitration. The judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

The arbitration will proceed in the county where Agent's office is located and be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's then-applicable Commercial Arbitration Rules (the "Rules"). Any party who fails or refuses to submit to arbitration following a demand by the other party shall bear all costs and expenses, including attorneys' fees, incurred by such other party in compelling arbitration.

The arbitration will be decided by a single arbitrator selected according to the Rules. The arbitrator will decide any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication and may grant any remedy or relief that a court could order or grant on similar motions. The arbitrator shall apply the provisions of this Representation Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof.

In any arbitration proceeding discovery will be permitted only in accordance with the terms of this paragraph. Discovery by each party shall be limited to: (i) a maximum number of five (5) depositions limited to four hours each; (ii) requests for production of documents; (iii) two interrogatories: one inquiring into the amount of damages sought by the other party and another into the calculation of those damages; and (iv) subpoenas upon third parties for production of documents, depositions, and to appear at a hearing. The scope of discovery may be expanded only upon the mutual consent of the parties. Discovery not set forth in this paragraph shall not be permitted.

The Parties understand and agree that they are entering into this arbitration agreement voluntarily, and that by doing so they are waiving their rights to a jury trial or to have their claims otherwise litigated in court.

15. ATTORNEYS' FEES: In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs and expenses, including costs and expenses of arbitration, court costs and expenses incurred on appeal, and reasonable attorneys' fees incurred in any dispute through arbitration and appeal of and final judgment in addition to any other relief to which such party may be entitled.

16. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

17. SEVERABILITY: In the event any term or provision of this Agreement shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

18. ADDENDA: Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature

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whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

SELLER: Hahn Hotels, LLC
ADDRESS: PO Box 351
Judson, TX 75660
DATE: _____

BY: _____
SELLER: Mr. Dante Hahn, Presidenteent

AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES

BY: _____ DATE: _____

READ AND APPROVED:

BY: _____ DATE: _____
Regional Manager
Marcus & Millichap Real Estate Investment Services



Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about Brokerage services to prospective buyers, tenants, seller and landlords.

TYPES OF REAL ESTATE LICENSE HOLDERS:

- **A BROKER** is responsible for all brokerage activities including acts performed by sales agents sponsored by the broker.
- **A SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

AS AGENT FOR OWNER (SELLER/LANDLORD): The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

AS AGENT FOR BOTH – INTERMEDIARY: To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with provide opinions and advice to, and carry out the instructions of each party to the transaction;
- Must not, unless specifically authorized in writing to do so by the party, disclose:
 - That the owner will accept a price less than the written asking price;
 - That the buyer/tenant will pay a price greater than the price submitted in a written offer; and
 - Any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

AS SUBAGENT: A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must palce the interest of the owner first.

TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

<u>Marcus & Millichap</u> Licensed Broker/Broker Firm Name or Primary Assumed Business Name	<u>9002994</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Tim A. Speck</u> Designated Broker or Firm	<u>432723</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
Lisa Hankamer Licensed Supervisor of Sales Agent/ Associate	439036 License No.	Lisa.Hankamer@marcusmillichap.com Email Address	713.452.4247 Phone
_____ Sales Agent/Associate's Name	_____ License No.	_____ Email Address	_____ Phone
_____ Buyer/Tenant/Seller/Landlord Initials	_____ Date		

Marcus & Millichap

REPRESENTATION AGREEMENT (EXCLUSIVE RIGHT TO SELL OR EXCHANGE)

**THIS DOCUMENT IS INTENDED TO BE A LEGALLY BINDING CONTRACT.
PLEASE READ IT CAREFULLY.**

The undersigned ("Seller"), hereby agrees to enter into this Exclusive Right To Sell Or Exchange Representation Agreement ("Agreement"), and hereby employs Marcus & Millichap Real Estate Investment Services ("Agent"), and grants to Agent, for a period of time as set forth herein, the exclusive and irrevocable right and authority to sell or exchange that certain real property ("Property") located in Longview, TX, and more particularly described as follows:

The City Center is mixed use property located at 616 City Center Way, Longview TX 75605.

1. **To Be Determined PURCHASE PRICE/TERMS:** Agent is authorized to offer the Property for sale at a gross purchase price ~~\$4,250,000~~, or upon the terms stated in the Financing Addendum attached hereto, if any, or in all cases, upon such other terms and conditions as Seller may approve in writing.

2. **TERM:** This Agreement shall commence on the day this Agreement is executed by Seller (the "Commencement Date") and shall continue for a period of Six (6) months from such date through and including midnight on May 15th, 2018 (the "Original Term"). If an agreement of sale or letter of intent for the sale is executed, and if said agreement or letter of intent is revoked or terminated, or the transaction is canceled, the Original Term shall be extended by the number of calendar days during which the sale agreement or letter of intent was in effect (the "Extended Term"). The purpose of this automatic extension is to allow agent the opportunity to expose the Property to the marketplace for the full period of time contemplated by this Agreement. The Original Term, as the same may be extended by the Extended Term, or by any other extensions as set forth herein, or as otherwise may be agreed to by Seller and Agent, shall collectively be referred to herein as the "Term".

3. **COMMISSION:** In consideration of the services to be rendered by Agent, Seller agrees to pay to Agent a commission equal to Five percent (5 %) of the purchase price of the Property (the "Commission") upon the occurrence of any of the following events:

a. A buyer is procured during the Term who is ready, willing and able to purchase the Property on the terms and conditions set forth herein or on any other terms and conditions acceptable to Seller, who is able to close on the sale of the Property, and the Property is conveyed to such buyer; or

b. The Property is sold, exchanged or otherwise conveyed during the Term, whether by Seller or any other person or entity; or

c. A sale, exchange or other conveyance of the Property is made during the Term, or within nine (9) months after the expiration of the Term to a person or entity with whom Agent has negotiated, or to whose attention the Property has been brought, or who was introduced to Seller as a prospective purchaser (herein, "Prospective Purchaser"), provided that (i) the name of any such person or entity has been submitted to Seller by delivery of a written offer to purchase the Property prior to expiration of the Term, or (ii) written notice has been given to Seller of the name of the Prospective Purchaser within fifteen (15) calendar days after the expiration of the Term. With respect to a sale, exchange or other conveyance to any Prospective Purchaser, Agent shall

conclusively be deemed to be the procuring cause. The term "Prospective Purchaser" shall include that person or entity to whose attention Agent has brought the Property, as well as any partnership, joint venture, corporation, trust or other similar entity which that person or entity represents or in which it holds an ownership or beneficial interest.

d. In the case of any sale accomplished through an escrow, this commission shall be paid at close of escrow, and Agent shall be entitled to make demand of any escrow holder for payment from the proceeds of sale. Seller and Agent agree that if completion of a sale of the Property pursuant to a duly executed purchase agreement is prevented by default of the Buyer, Seller shall be obligated to pay to Agent only an amount equal to one-half of any damages or other monetary compensation collected from said Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected; provided, however, that the amount due Agent shall not exceed the brokerage commission set forth above. The term "Property" shall include any interest therein or in its ownership. **Notwithstanding anything contained in this agreement to the contrary, if the Property is sold to affiliates or principles of Mockingbird Sulphur Springs Properties, LLC (the "Existing Potential Buyer") for \$3.5 million or less, then Broker will waive the commission. If the Existing Potential Buyer pays more than \$3.5 million, then the Broker will receive a commission on the difference between the price actually paid by the Existing Potential Buyer and \$3.5 million.**

e. If no sale or transfer of the Property is effected within the earlier of a) one (1) year, or b) such other time as is established by the Bankruptcy Court for such contemplated sale, and the Seller determines thereafter to convey the Property to the lender or secured party with a lien on said Property, then the Commission under this Section 3 is hereby waived in full by Agent, and Seller shall not be obligated or liable for the same.

f. In no event will the combined commission paid to Seller's broker and buyer's broker exceed the total commission recited in this Section 3.

4 **NOTICE OF BROKER LIEN LAW:** The Commission shall be paid at the Closing, and Agent shall be entitled to make demand of any escrow holder or closing attorney for payment from the proceeds of sale. **Seller is hereby advised that pursuant to Chapter 62 of the Texas Property Code (known as the "Broker's and Appraiser's Lien on Commercial Real Estate Act"), Agent is entitled to claim a lien on the Property with regard to the ownership interests of the Seller, a Prospective Purchaser, and a lessor or lessee, for Agent's Commission if Agent has earned the Commission and a notice of lien is recorded and indexed.**

5. **OTHER TERMS AND CONDITIONS:**

a. **Indemnification:** Seller agrees to indemnify and hold Agent harmless from any and all liability, damages, losses, causes of action, or other claims (including reasonable attorneys' fees and other defense costs) solely arising from or asserted in connection with any incomplete or inaccurate information knowingly provided by Seller, or any material information concerning the Property which Seller has knowingly failed to disclose and for any claims against Agent for environmental responsibility with respect to the Property.

b. **Notification of Inquiries:** Seller agrees to promptly refer to Agent all inquiries of anyone interested in the Property or who approaches Seller in any direct or indirect way with respect to the Property. It is understood and agreed that Seller shall provide Agent with fully executed copies of any and all Letters of Intent, Agreements of Sale, Settlement or Closing Statements, and an executed FIRPTA form on or before the Closing date.

c. **Inspections:** Seller agrees that Agent and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property with prospective buyers at reasonable hours. Seller agrees to furnish and make available to Prospective Purchasers all financial data concerning the Property.

6. **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchasers. Agent

shall not, however, have authority to bind Seller to any contract or purchase agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for confidential information regarding Seller's business or financial condition and the negotiation of the terms of a purchase agreement between Seller and a prospective purchaser, Seller and Agent agree that their relationship is at arm's length.

7. **REQUIRED DISCLOSURES:**

A. **Property Condition:** As required by law, Seller and Agent must disclose any known material defect in the Property to a prospective buyer. *(Check (1) or (2) only.)*

(1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement. Seller authorizes Agent to furnish prospective buyers and other brokers with a copy of the Property Condition Statement.

(2) Except as listed below, Seller is not aware of:

- (a) any material defect on the Property or any condition that materially and detrimentally affects the Property;
- (b) any condition on the Property that violates any law or ordinance;
- (c) whether any part of the Property lies in a flood hazard area;
- (d) any environmental hazards or conditions that affect the Property;
- (e) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground storage tanks or containers;
- (f) whether radon, asbestos insulation or fireproofing, urea-formaldehyde foam insulation, lead-based paint, or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
- (g) whether wetlands as defined by federal or state law or regulation are on the Property; and
- (h) whether threatened or endangered species or their habitat are on the Property.

Exceptions:

B. **Accuracy of Required Disclosures:** Seller represents that Seller has disclosed all known material defects and material facts affecting the Property.

8. **AGENCY RELATIONSHIPS:**

A. Seller acknowledges receipt of the attached exhibit entitled "Information About Brokerage Services" which is incorporated in this Listing for all purposes.

B. Agent will exclusively represent Seller in negotiations for the sale of the Property unless Seller authorizes Agent, as set forth below, to act as an intermediary or a dual agent in the event Agent also represents a Buyer who offers to purchase the Property. *(Check (1) or (2) only.)*

(1) **Intermediary Relationship Authorized:** Seller acknowledges and desires for Agent to show the Property to all prospective Buyers it feels are qualified in order to maximize the exposure regardless of who represents the Buyer. Specifically, Seller authorizes Agent

to show the Property to prospective buyers Agent has or may agree to represent. As required by Texas law, if Agent represents a Buyer who offers to buy the Property, Seller must authorize Agent to act as an intermediary between the Buyer and Seller, to present any offer such buyer may wish to make, and to assist both Seller and Buyer in negotiations for the sale of the Property. *(Agent recommends that Seller choose this option so that Seller's property may be marketed to all clients who may be interested in buying Seller's property. Without authorization, Agent will likely not be able to show to all Buyers.)*

As required by law, if Agent acts as an intermediary between Seller and a Buyer, Agent:

- (a) may not disclose to the Buyer that Seller will accept a price less than the asking price (Listing Price) unless otherwise instructed in a separate writing by Seller;**
- (b) may not disclose to Seller that the Buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the Buyer;**
- (c) may not disclose any confidential information or any information Seller or Buyer specifically instructs Agent in writing not to disclose unless otherwise instructed in a separate writing by the respective party, or the information materially relates to the condition of the Property, or Agent is required to disclose the information by a court order or by the Real Estate License Act;**
- (d) shall treat all parties to the transaction honestly; and**
- (e) shall comply with the Real Estate License Act.**

If Agent acts as an intermediary, Agent may appoint a licensed associates(s) of Agent to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller and appoint another licensed associate(s) for the same purposes to a Buyer.

____ (2) Intermediary Relationship not Authorized: Agent will exclusively represent Seller and may not act as an intermediary between Seller and a Buyer. Seller understands: *(Check (a) or (b) only) (Agent does not recommend that Seller choose this option in that Seller's property cannot be widely marketed to Agent's large database of Buyer clients who may be interested in buying Seller's property, doing so could violate Texas Agency Law..)*

- ____ (a) Agent exclusively represents sellers and does not represent Buyers.
- ____ (b) Agent represents both Buyers and Sellers, but Agent will not show the Property to any Buyer Agent represents.

C. During the term of this Listing or after its termination, Agent may not knowingly disclose information obtained in confidence from Seller, except as authorized by Seller or required by law. Agent may not disclose to Seller any information obtained in confidence regarding any other person Agent represents or may have represented, except as required by law.

9. **AFFILIATED BROKERS:** Agent is affiliated with other Marcus & Millichap brokerage companies in other states. Agent shall disseminate information about the Property to such affiliated brokers, inviting the submission of offers on the Property. Seller authorizes Agent and any affiliated broker to represent any prospective buyer in the acquisition of the Property, and to submit offers on behalf of such buyers. Seller understands that this authorization may result in Agent's representing both Seller and a prospective buyer, and Seller hereby authorizes and consents to such intermediary relationship and agrees to execute a confirmation of such disclosed intermediary relationship if prospective purchaser is already represented by an affiliated entity. Agent reserves the right to cooperate or not cooperate with other brokers. Agent reserves this right in an effort to minimize unauthorized showings and unnecessary disclosures of Property.

10. **SELLER'S REPRESENTATIONS:** Except as provided in Paragraph 7, Seller represents and warrants that:

- A. Fee title to the Property is now vested as follows: Hahn Investments, LLC ;
- B. the undersigned Seller has the legal right to sell the Property and to bind any other individuals and entities that may have an ownership interest in the Property, subject to Bankruptcy Court approval;
- C. the execution of this Agreement shall not result in any knowing breach of, or constitute a default under, any contract or other agreement to which Seller is a part;
- D. Seller is not now a party to a listing agreement with another broker for the sale, exchange, or lease of the Property;
- E. no person or entity has any right to purchase, lease, or acquire the Property by virtue of an option, right of first refusal, or other agreement;
- F.
- G. This Agreement is not binding until approved by the United States Bankruptcy Court for the Eastern District of Texas; and
- H. all information relating to the Property provided to Agent by Seller is true and correct.

11. **SELLER'S ADDITIONAL PROMISES:** Seller agrees to:

- A. cooperate fully in good faith with Agent to facilitate the showing and marketing of the Property;
- B. refer all prospective buyers to Agent and not negotiate with any prospective buyer directly;
- C. not enter into a listing agreement for the sale or exchange of the Property with another broker to become effective during the term of this Listing;
- D. provide Agent with copies of a current rent roll, all leases including any amendments, architectural plans and drawings, and a current operating statement, if any pertaining to the Property and
- E. advise Agent of any tenants moving in or out of the property.

12. **ENTIRE AGREEMENT:** This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

13. **NOTICES:**

- A. **Agent is obligated under law to show and make the Property available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g. creed, status as a student, marital status, sexual orientation, or age).**
- B. **Unless expressly agreed otherwise, Agent will submit all offers received by Agent for the sale of the Property, including any back-up offers Agent receives after Seller has entered into a binding contract to sell the Property. Agent is not obligated to continue to market the Property after seller has entered into a binding contract to sell the Property, unless specifically requested by Seller in writing.**
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- D. **Agent cannot give legal advice. This is intended to be legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**
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The arbitration will proceed in the county where Agent's office is located and be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's then-applicable Commercial Arbitration Rules (the "Rules"). Any party who fails or refuses to submit to arbitration following a demand by the other party shall bear all costs and expenses, including attorneys' fees, incurred by such other party in compelling arbitration.

The arbitration will be decided by a single arbitrator selected according to the Rules. The arbitrator will decide any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication and may grant any remedy or relief that a court could order or grant on similar motions. The arbitrator shall apply the provisions of this Representation Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof.

In any arbitration proceeding discovery will be permitted only in accordance with the terms of this paragraph. Discovery by each party shall be limited to: (i) a maximum number of five (5) depositions limited to four hours each; (ii) requests for production of documents; (iii) two interrogatories: one inquiring into the amount of damages sought by the other party and another into the calculation of those damages; and (iv) subpoenas upon third parties for production of documents, depositions, and to appear at a hearing. The scope of discovery may be expanded only upon the mutual consent of the parties. Discovery not set forth in this paragraph shall not be permitted.

The Parties understand and agree that they are entering into this arbitration agreement voluntarily, and that by doing so they are waiving their rights to a jury trial or to have their claims otherwise litigated in court.

15. **ATTORNEYS' FEES:** In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs and expenses, including costs and expenses of arbitration, court costs and expenses incurred on appeal, and reasonable attorneys' fees incurred in any dispute through arbitration and appeal of and final judgment in addition to any other relief to which such party may be entitled.

16. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

17. **SEVERABILITY:** In the event any term or provision of this Agreement shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

18. **ADDENDA:** Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

SELLER: Hahn Investments, LLC SELLER: _____
 c/o: Dante Hahn

ADDRESS: PO Box 351 ADDRESS: _____
Judson, TX 75660

DATE: _____ DATE: _____

BY: _____
SELLER

AGENT: **MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES**

BY:  _____ DATE: _____

READ AND APPROVED:

BY:  _____ DATE: 11/1/2017

Regional Manager
 Marcus & Millichap Real Estate Investment Services

11-2-2015



Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about Brokerage services to prospective buyers, tenants, seller and landlords.

TYPES OF REAL ESTATE LICENSE HOLDERS:

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- A **SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
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A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

AS AGENT FOR OWNER (SELLER/LANDLORD): The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

AS AGENT FOR BOTH – INTERMEDIARY: To act as an intermediary between the parties the broker must first obtain the written agreement of *each* party to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with provide opinions and advice to, and carry out the instructions of each party to the transaction;
- Must not, unless specifically authorized in writing to do so by the party, disclose:
 - That the owner will accept a price less than the written asking price;
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 - Any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

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TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

<u>Marcus & Millichap</u> Licensed Broker/Broker Firm Name or Primary Assumed Business Name	<u>9002994</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Tim A. Speck</u> Designated Broker or Firm	<u>432723</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Kyle Palmer</u> Licensed Supervisor of Sales Agent/ Associate	<u>673787</u> License No.	<u>kyle.palmer@marcusmillichap.com</u> Email Address	<u>817-932-6100</u> Phone
_____ Sales Agent/Associate's Name	_____ License No.	_____ Email Address	_____ Phone
_____ Buyer/Tenant/Seller/Landlord Initials	_____ Date		

Regulated by the Texas Real Estate Commission

Information available at www.trec.texas.gov

Marcus & Millichap

REPRESENTATION AGREEMENT (EXCLUSIVE RIGHT TO SELL OR EXCHANGE)

**THIS DOCUMENT IS INTENDED TO BE A LEGALLY BINDING CONTRACT.
PLEASE READ IT CAREFULLY.**

The undersigned (“Seller”), hereby agrees to enter into this Exclusive Right To Sell Or Exchange Representation Agreement (“Agreement”), and hereby employs Marcus & Millichap Real Estate Investment Services (“Agent”), and grants to Agent, for a period of time as set forth herein, the exclusive and irrevocable right and authority to sell or exchange that certain real property (“Property”) located in Longview, TX, and more particularly described as follows:

Downtown mixed use commercial and residential lofts located at 108/110 E. Tyler Street, Longview, TX 75601

1. **PURCHASE PRICE/TERMS:** Agent is authorized to offer the Property for sale at a gross purchase price to be determined, or upon the terms stated in the Financing Addendum attached hereto, if any, or in all cases, upon such other terms and conditions as Seller may approve in writing.

2. **TERM:** This Agreement shall commence on the day this Agreement is executed by Seller (the “Commencement Date”) and shall continue for a period of Six (6) months from such date through and including midnight on May 15th, 2018 (the “Original Term”). If an agreement of sale or letter of intent for the sale is executed, and if said agreement or letter of intent is revoked or terminated, or the transaction is canceled, the Original Term shall be extended by the number of calendar days during which the sale agreement or letter of intent was in effect (the “Extended Term”). The purpose of this automatic extension is to allow agent the opportunity to expose the Property to the marketplace for the full period of time contemplated by this Agreement. The Original Term, as the same may be extended by the Extended Term, or by any other extensions as set forth herein, or as otherwise may be agreed to by Seller and Agent, shall collectively be referred to herein as the “Term”.

3. **COMMISSION:** In consideration of the services to be rendered by Agent, Seller agrees to pay to Agent a commission equal to Five percent (5 %) of the purchase price of the Property (the “Commission”) upon the occurrence of any of the following events:

a. A buyer is procured during the Term who is ready, willing and able to purchase the Property on the terms and conditions set forth herein or on any other terms and conditions acceptable to Seller, who is able to close on the sale of the Property, and the Property is conveyed to such buyer; or

b. The Property is sold, exchanged or otherwise conveyed during the Term, whether by Seller or any other person or entity; or

c. A sale, exchange or other conveyance of the Property is made during the Term, or within nine (9) months after the expiration of the Term to a person or entity with whom Agent has negotiated, or to whose attention the Property has been brought, or who was introduced to Seller as a prospective purchaser (herein, “Prospective Purchaser”), provided that (i) the name of any such person or entity has been submitted to Seller by delivery of a written offer to purchase the Property prior to expiration of the Term, or (ii) written notice has been given to Seller of the name of the Prospective Purchaser within fifteen (15) calendar days after the expiration of

the Term. With respect to a sale, exchange or other conveyance to any Prospective Purchaser, Agent shall conclusively be deemed to be the procuring cause. The term "Prospective Purchaser" shall include that person or entity to whose attention Agent has brought the Property, as well as any partnership, joint venture, corporation, trust or other similar entity which that person or entity represents or in which it holds an ownership or beneficial interest.

d. In the case of any sale accomplished through an escrow, this commission shall be paid at close of escrow, and Agent shall be entitled to make demand of any escrow holder for payment from the proceeds of sale. Seller and Agent agree that if completion of a sale of the Property pursuant to a duly executed purchase agreement is prevented by default of the Buyer, Seller shall be obligated to pay to Agent only an amount equal to one-half of any damages or other monetary compensation collected from said Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected; provided, however, that the amount due Agent shall not exceed the brokerage commission set forth above. The term "Property" shall include any interest therein or in its ownership.

e. If no sale or transfer of the Property is effected within the earlier of a) one (1) year, or b) such other time as is established by the Bankruptcy Court for such contemplated sale, and the Seller determines thereafter to convey the Property to the lender or secured party with a lien on said Property, then the Commission under this Section 3 is hereby waived in full by Agent, and Seller shall not be obligated or liable for the same.

f. In no event will the combined commission paid to Seller's broker and buyer's broker exceed the total commission recited in this Section 3.

4 **NOTICE OF BROKER LIEN LAW:** The Commission shall be paid at the Closing, and Agent shall be entitled to make demand of any escrow holder or closing attorney for payment from the proceeds of sale. **Seller is hereby advised that pursuant to Chapter 62 of the Texas Property Code (known as the "Broker's and Appraiser's Lien on Commercial Real Estate Act"), Agent is entitled to claim a lien on the Property with regard to the ownership interests of the Seller, a Prospective Purchaser, and a lessor or lessee, for Agent's Commission if Agent has earned the Commission and a notice of lien is recorded and indexed.**

5. **OTHER TERMS AND CONDITIONS:**

a. **Indemnification:** Seller agrees to indemnify and hold Agent harmless from any and all liability, damages, losses, causes of action, or other claims (including reasonable attorneys' fees and other defense costs) solely arising from or asserted in connection with any incomplete or inaccurate information knowingly provided by Seller, or any material information concerning the Property which Seller has knowingly failed to disclose and for any claims against Agent for environmental responsibility with respect to the Property.

b. **Notification of Inquiries:** Seller agrees to promptly refer to Agent all inquiries of anyone interested in the Property or who approaches Seller in any direct or indirect way with respect to the Property. It is understood and agreed that Seller shall provide Agent with fully executed copies of any and all Letters of Intent, Agreements of Sale, Settlement or Closing Statements, and an executed FIRPTA form on or before the Closing date.

c. **Inspections:** Seller agrees that Agent and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property with prospective buyers at reasonable hours. Seller agrees to furnish and make available to Prospective Purchasers all financial data concerning the Property.

6. **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchasers. Agent shall not, however, have authority to bind Seller to any contract or purchase agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for confidential information regarding Seller's business or financial condition and the negotiation of the terms of a purchase agreement between Seller and a prospective purchaser, Seller and Agent agree that their relationship is at arm's length.

7. **REQUIRED DISCLOSURES:**

A. **Property Condition:** As required by law, Seller and Agent must disclose any known material defect in the Property to a prospective buyer. *(Check (1) or (2) only.)*

(1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement. Seller authorizes Agent to furnish prospective buyers and other brokers with a copy of the Property Condition Statement.

(2) Except as listed below, Seller is not aware of:

- (a) any material defect on the Property or any condition that materially and detrimentally affects the Property;
- (b) any condition on the Property that violates any law or ordinance;
- (c) whether any part of the Property lies in a flood hazard area;
- (d) any environmental hazards or conditions that affect the Property;
- (e) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground storage tanks or containers;
- (f) whether radon, asbestos insulation or fireproofing, urea-formaldehyde foam insulation, lead-based paint, or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
- (g) whether wetlands as defined by federal or state law or regulation are on the Property; and
- (h) whether threatened or endangered species or their habitat are on the Property.

Exceptions:

B. **Accuracy of Required Disclosures:** Seller represents that Seller has disclosed all known material defects and material facts affecting the Property.

8. **AGENCY RELATIONSHIPS:**

A. Seller acknowledges receipt of the attached exhibit entitled "Information About Brokerage Services" which is incorporated in this Listing for all purposes.

B. Agent will exclusively represent Seller in negotiations for the sale of the Property unless Seller authorizes Agent, as set forth below, to act as an intermediary or a dual agent in the event Agent also represents a Buyer who offers to purchase the Property. *(Check (1) or (2) only.)*

EXHIBIT B

X (1) Intermediary Relationship Authorized: Seller acknowledges and desires for Agent to show the Property to all prospective Buyers it feels are qualified in order to maximize the exposure regardless of who represents the Buyer. Specifically, Seller authorizes Agent to show the Property to prospective buyers Agent has or may agree to represent. As required by Texas law, if Agent represents a Buyer who offers to buy the Property, Seller must authorize Agent to act as an intermediary between the Buyer and Seller, to present any offer such buyer may wish to make, and to assist both Seller and Buyer in negotiations for the sale of the Property. (Agent recommends that Seller choose this option so that Seller's property may be marketed to all clients who may be interested in buying Seller's property. Without authorization, Agent will likely not be able to show to all Buyers.)

As required by law, if Agent acts as an intermediary between Seller and a Buyer, Agent:

- (a) may not disclose to the Buyer that Seller will accept a price less than the asking price (Listing Price) unless otherwise instructed in a separate writing by Seller;
- (b) may not disclose to Seller that the Buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the Buyer;
- (c) may not disclose any confidential information or any information Seller or Buyer specifically instructs Agent in writing not to disclose unless otherwise instructed in a separate writing by the respective party, or the information materially relates to the condition of the Property, or Agent is required to disclose the information by a court order or by the Real Estate License Act;
- (d) shall treat all parties to the transaction honestly; and
- (e) shall comply with the Real Estate License Act.

If Agent acts as an intermediary, Agent may appoint a licensed associates(s) of Agent to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller and appoint another licensed associate(s) for the same purposes to a Buyer.

____ (2) Intermediary Relationship not Authorized: Agent will exclusively represent Seller and may not act as an intermediary between Seller and a Buyer. Seller understands: (Check (a) or (b) only) (Agent does not recommend that Seller choose this option in that Seller's property cannot be widely marketed to Agent's large database of Buyer clients who may be interested in buying Seller's property, doing so could violate Texas Agency Law..)

- ____ (a) Agent exclusively represents sellers and does not represent Buyers.
- ____ (b) Agent represents both Buyers and Sellers, but Agent will not show the Property to any Buyer Agent represents.

C. During the term of this Listing or after its termination, Agent may not knowingly disclose information obtained in confidence from Seller, except as authorized by Seller or required by law. Agent may not disclose to Seller any information obtained in confidence regarding any other person Agent represents or may have represented, except as required by law.

9. **AFFILIATED BROKERS:** Agent is affiliated with other Marcus & Millichap brokerage companies in other states. Agent shall disseminate information about the Property to such affiliated brokers, inviting the submission of offers on the Property. Seller authorizes Agent and any affiliated broker to represent any prospective buyer in the acquisition of the Property, and to submit offers on behalf of such buyers. Seller understands that this authorization may result in Agent's representing both Seller and a prospective buyer, and Seller hereby authorizes and consents to such intermediary relationship and agrees to execute a confirmation of

such disclosed intermediary relationship if prospective purchaser is already represented by an affiliated entity. Agent reserves the right to cooperate or not cooperate with other brokers. Agent reserves this right in an effort to minimize unauthorized showings and unnecessary disclosures of Property.

10. **SELLER'S REPRESENTATIONS:** Except as provided in Paragraph 7, Seller represents and warrants that:

- A. Fee title to the Property is now vested as follows: Hahn Investments, LLC ;
- B. the undersigned Seller has the legal right to sell the Property and to bind any other individuals and entities that may have an ownership interest in the Property, subject to Bankruptcy Court approval;
- C. the execution of this Agreement shall not result in any knowing breach of, or constitute a default under, any contract or other agreement to which Seller is a part;
- D. Seller is not now a party to a listing agreement with another broker for the sale, exchange, or lease of the Property;
- E. no person or entity has any right to purchase, lease, or acquire the Property by virtue of an option, right of first refusal, or other agreement;
- F.
- G. This Agreement is not binding until approved by the United States Bankruptcy Court for the Eastern District of Texas; and
- H. all information relating to the Property provided to Agent by Seller is true and correct.

11. **SELLER'S ADDITIONAL PROMISES:** Seller agrees to:

- A. cooperate fully in good faith with Agent to facilitate the showing and marketing of the Property;
- B. refer all prospective buyers to Agent and not negotiate with any prospective buyer directly;
- C. not enter into a listing agreement for the sale or exchange of the Property with another broker to become effective during the term of this Listing;
- D. provide Agent with copies of a current rent roll, all leases including any amendments, architectural plans and drawings, and a current operating statement, if any pertaining to the Property and
- E. advise Agent of any tenants moving in or out of the property.

12. **ENTIRE AGREEMENT:** This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

13. **NOTICES:**

- A. **Agent is obligated under law to show and make the Property available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g. creed, status as a student, marital status, sexual orientation, or age).**
- B. **Unless expressly agreed otherwise, Agent will submit all offers received by Agent for the sale of the Property, including any back-up offers Agent receives after Seller has entered into a binding contract to sell the Property. Agent is not obligated to continue to market the Property after seller has entered into a binding contract to sell the Property, unless specifically requested by Seller in writing.**
- C. **If the Property contains any residential dwelling built before 1978, federal law requires that before a buyer is obligated to purchase the Property, the Seller will: (1) provide the buyer**

- D. **Agent cannot give legal advice. This is intended to be legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**
- E. **Seller understands and acknowledges that broker is not qualified to provide, and has not been contracted to provide legal, financial or tax advice, and that any such advice must be obtained from seller's attorney, accountant or tax professional.**

14. **ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL:** All disputes arising between the Parties with respect to the subject matter of this Representation Agreement (including but not limited to the payment of commissions as provided herein) shall be settled exclusively by final, binding arbitration. The judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

The arbitration will proceed in the county where Agent's office is located and be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's then-applicable Commercial Arbitration Rules (the "Rules"). Any party who fails or refuses to submit to arbitration following a demand by the other party shall bear all costs and expenses, including attorneys' fees, incurred by such other party in compelling arbitration.

The arbitration will be decided by a single arbitrator selected according to the Rules. The arbitrator will decide any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication and may grant any remedy or relief that a court could order or grant on similar motions. The arbitrator shall apply the provisions of this Representation Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof.

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The Parties understand and agree that they are entering into this arbitration agreement voluntarily, and that by doing so they are waiving their rights to a jury trial or to have their claims otherwise litigated in court.

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SELLER:	Hahn Investments, LLC c/o: Dante Hahn	SELLER:	_____
ADDRESS:	PO Box 351	ADDRESS:	_____
	Judson, TX 75660		_____
DATE:	_____	DATE:	_____

BY: _____
SELLER

AGENT: **MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES**

BY:		DATE:	_____
READ AND APPROVED:			

BY:		DATE:	<u>11/1/2017</u>
	Regional Manager		
	Marcus & Millichap Real Estate Investment Services		



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- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with provide opinions and advice to, and carry out the instructions of each party to the transaction;
- Must not, unless specifically authorized in writing to do so by the party, disclose:
 - That the owner will accept a price less than the written asking price;
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- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

<u>Marcus & Millichap</u> Licensed Broker/Broker Firm Name or Primary Assumed Business Name	<u>9002994</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Tim A. Speck</u> Designated Broker or Firm	<u>432723</u> License No.	<u>tim.speck@marcusmillichap.com</u> Email Address	<u>972-755-5200</u> Phone
<u>Kyle Palmer</u> Licensed Supervisor of Sales Agent/ Associate	<u>673787</u> License No.	<u>kyle.palmer@marcusmillichap.com</u> Email Address	<u>817-932-6100</u> Phone
_____ Sales Agent/Associate's Name	_____ License No.	_____ Email Address	_____ Phone
_____ Buyer/Tenant/Seller/Landlord Initials	_____ Date		

Regulated by the Texas Real Estate Commission

Information available at www.trec.texas.gov

EXHIBIT C

Marcus & Millichap Capital Corporation

Limited Capital Services Engagement Agreement

Thank you for engaging Marcus & Millichap Capital Corporation ("**MMCC**") to provide you with the Capital Markets Services indicated below. The purpose of this Agreement is to define the scope of that representation, how our services will be provided to you, and the fees associated with such services. **This Agreement is legally binding and should be read carefully.**

Services to be Provided:

MMCC will assist you, the undersigned Borrower, in seeking financing with prospective lenders and in negotiating the terms of financing with prospective lenders for the following assets (the "Assets"):

Hahn Investments, LLC, as defined in Attachment A

To that end, MMCC will create and structure a financing request memorandum package, and shall submit that package to lenders in an attempt to generate competitive offers. MMCC will consult with you in connection with its preparation of the financing request memorandum package. In performing these services, you understand that MMCC is not acting as your agent or the agent of any lender and is not responsible for performing any investigation or due diligence of the Asset or the underlying investment, or for providing professional tax or legal advice.

You are retaining MMCC as a non-exclusive real estate finance broker for a period of one (1) year (the "Term") to work on your behalf to obtain debt financing on the Asset.

Fees for Services Provided:

You agree to pay MMCC an Origination Fee (the "Fee") equal to Two Percent (2.0%) of the final loan amount in the event that a commitment or proposed note or mortgage is issued on any terms and conditions agreed to or accepted by you as a result of MMCC's efforts, only in the event the loan closes.

The obligation to pay MMCC a Fee in the event you obtain financing from any lender disclosed or introduced to you by MMCC extends to financing obtained in connection with real property not identified in this Agreement and must be paid even if you pay MMCC a Fee in connection with the Asset identified in this Agreement.

The Fee is due to MMCC upon closing, and MMCC will be entitled to make demand of any closing agent for payment from the proceeds of the financing, and you shall issue instructions directing that the closing agent pay MMCC the Fee. In no event shall MMCC be paid later than 30 days after any of the events resulting in the Fee.

This Fee is in addition to all other third-party processing and report costs, and you agree to pay any expenses that may be required or incurred by a lender to complete the debt financing, including, but not limited to, title insurance, application fees, legal fees, appraisal costs, commitment fees, survey costs, documentation fees, and environmental audits.

This Fee is also in addition to a **processing fee in the amount of \$0.00** which you agree to pay MMCC upon closing.

To cover third-party processing and report costs, you agree to pay to MMCC a **deposit of \$0.00** upon execution of this Agreement. If financing is not obtained, any remaining portion of the deposit will be refunded to you. If financing is obtained, any remaining portion of the deposit will be applied toward the Fee due to MMCC.

EXHIBIT C

Other Terms:

- You understand that MMCC is not the lender, and that MMCC does not guarantee that financing can be obtained. If MMCC obtains a commitment or proposed note or mortgage, you agree to review it promptly and assist MMCC in negotiating a final form of financing acceptable to you and the lender, though the ultimate decision to accept financing remains yours.
- You agree to **defend, indemnify and hold MMCC harmless** from any and all claims, demands, liabilities and damages arising from or related to any incorrect information knowingly supplied by you or any material information which you fail to supply.
- .
- In any litigation or other legal proceeding which may arise out of or relating to this Agreement, the prevailing party shall be entitled to recover its costs, **including reasonable attorneys' fees**.
- This Agreement is binding upon and insures to the benefit of the parties and their legal representatives, successors and assigns. The Agreement may not be assigned without the consent of both parties
- This Agreement is binding upon the parties only upon approval of the United States Bankruptcy Court for the Eastern District of Texas.
- You understand and acknowledge that the closing of the financing contemplated under this Agreement could be delayed by factors outside of MMCC's control. If delayed, you may realize a taxable event or suffer other tax and financial penalties. You **hereby release and hold MMCC harmless** from any and all liability or other financial consequences arising out of or related to delay caused by factors outside of MMCC's control.
- You acknowledge that MMCC is relying on information provided by you and has not made an independent investigation, determination, assessment, analysis, warranty or representation of, among other things, the value of the Asset, the financial, legal, title, physical, geological or environmental condition of the Asset, the financial condition or business prospects of any tenant, or such tenant's intent to continue or renew its tenancy in the Asset, or the suitability of the Asset for your contemplated use. You agree that investigation and analysis of the foregoing matters is your sole responsibility and that you will hold MMCC harmless from any liability therefore.
- You agree that MMCC and its affiliates and assigns may release publicity articles or advertising concerning this debt financing. Information released typically will include the loan amount, property type and description and city location.
- This Agreement shall be governed and construed in accordance with the laws of the State of Texas. Venue shall be in the State of Texas.
- MMCC makes no representation as to the legal effect or validity of any provision of this Agreement. If you desire legal, financial, or tax advice, consult your attorney, accountant, or tax advisor.
- This Agreement contains our entire understanding. There are no other written or oral agreements that affect this Agreement.

EXHIBIT C

Document Checklist:

You agree to provide the following information to MMCC:

- Current Rent Roll (ideally for the last 3 months)
- Contact information for existing lender, master servicer, special servicer (if applicable), as well as property and asset management;
- Operating Statements (ideally for the last 3 years) detailing income and expenses;
- Loan Documents (the Note, Deed of Trust or Mortgage, Personal Guarantees and Indemnity Agreements);
- Sources and Uses of Funds Statement that details all debt and equity balances;
- A chart detailing the ownership structure;
- A quick summary of your current capital placement efforts and strategies, if any (we can do this by phone);
- Any other relevant information that might impact financing, including but not limited to, a prepayment penalty on existing debt.

You acknowledge that the information you provide to MMCC will be accurate and complete.

By signing below, you authorize MMCC to disclose this information to prospective lenders and authorize MMCC and/or lenders to investigate your credit and financial histories as well as those of any entity or individual related to this Agreement, and to verify information from any source.

If the borrower is a corporation, company, or partnership, you represent that by signing below you are authorized to execute on behalf of and bind the corporation, company, or partnership.

Company Name (if applicable):	Marcus & Millichap Capital Corporation
Your Name:	By: Kyle Palmer
Your Address:	Our Address: 300 Throckmorton Street, Suite 1500 Fort Worth, TX 76102
Your Phone Number:	Our Phone Number: 817/932-6100
Your Email:	Our Email: Kyle.palmer@marcusmillichap.com
Signature:	Signature:

Effective Date:



EXHIBIT C

ADDENDUM A

<u>Debtor</u>	<u>Property Description</u>	<u>Address</u>
Hahn Investments, LLC	Tall Pines Retail Center	100 Tall Pines Ave., Longview, TX 75605
Hahn Investments, LLC	Oakview Villas Townhomes	165, 167, 175, 177, 185, and 187 Oakview Court, Longview, TX 75605
Hahn Investments, LLC	Downtown Mixed-Use Lofts and Restaurants	115 E. Tyler Street, Longview, TX 75601