

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE: §
HOTELWORKS DEVELOPMENT, LLC § **CASE NO. 16-51527-CAG**
DEBTOR § **CHAPTER 11 PROCEEDING**

**MOTION FOR AN ORDER (I) APPROVING PURCHASE AND SALE AGREEMENT
FOR SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS,
(II) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS, (III) AUTHORIZING THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES, AND (IV) GRANTING RELATED RELIEF**

TO THE HONORABLE CRAIG A. GARGOTTA, UNITED STATES BANKRUPTCY JUDGE:

NOW COMES the debtor and debtor in possession in the above-captioned case (the “Debtor”) by and through its undersigned counsel, submits this motion (the “Motion”) for an Order (I) approving the Purchase and Sale Agreement (the “PSA”) for the sale (the “Asset Sale”) of substantially all of Debtor’s assets (the “Property”) to LAWRENCE FRIEDMAN, TRUSTEE AND OR ASSIGNS (“Purchaser”) (II) authorizing the sale of the Property free and clear of all liens, claims, encumbrances, and interests, (III) authorizing the assumption and assignment of certain executory contracts and unexpired leases, and (IV) granting related relief. In support of the Motion, Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. The Court’s consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for relief are sections 105, 363, 365, 1107, and 1108 of the Bankruptcy Code.

BACKGROUND

A. The Bankruptcy Case

3. On July 4, 2016 (the “Petition Date”), the Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).

4. The Debtor continues to operate its business and manage its properties as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no creditor’s committee has been appointed in this Chapter 11 Case by the Office of the United States Trustee for the Western District of Texas (the “United States Trustee”). No trustee or examiner has been appointed in the Debtor’s Chapter 11 Case.

5. The Debtor’s primary asset is a 75 room hotel on 3.37 acres of real property located at 165 Mars Drive, Cotulla Texas (the “Property”). The construction of the Property was completed in 2014. The Property is fully outfitted to operate as a luxury hotel. It was constructed to meet the burgeoning demand for lodging resulting from the explosive growth in the Eagle Ford and commenced operations in 2014.

6. The decline in oil prices has destroyed the demand for lodging, resulting in devastating reduction in occupancy rates and room rates. The Debtor ceased operations at the property in late 2015 when management determined that the Property could no longer be operated profitably.

B. Liens Encumbering the Property

7. On or about May 30, 2013, Commerce Bank, (“Commerce Bank”) made a construction loan to Debtor under various pre-Petition Date loan documents (“Construction Loan”)

in the original principal amount of \$5,121,387.

8. The Debtor's obligations under the Construction Loan are secured pursuant to a first lien Deed of Trust recorded in La Salle County, Texas on June 19, 2013. The Construction Loan encumbers Property, including the land, improvements, fixtures, personal property and an assignment of rents, among other collateral. As of the Petition Date, approximately \$3.2 million of indebtedness was outstanding under the Construction Loan.

9. The Small Business Administration ("SBA") holds a second lien upon the Property to secure a loan in the approximate amount of \$2 million (the "SBA Loan"). A third lien was granted to Commerce Bank to secure a \$453,600 note to Ciena Hotels & Suites Cotulla, LLC (the "Ciena Loan"). The Construction Loan, together with the SBA Loan and the Ciena Loan are collectively referred to as the "Prepetition Loans".

C. Marketing the Property

10. Prior to filing its voluntary petition, the Debtor informally marketed the Property for sale and received several expressions of interest to purchase the Property. The Debtor engaged Hilco Real Estate, LLC ("Hilco") to formally and expansively market the Property and conduct an auction sale. Hilco advertised the Property for sale in display ads, online ads, email blasts and direct marketing. More than 500 individuals accessed detailed information regarding the Property online.

11. Hilco conducted an online auction on March 16, 2016. The bids failed to exceed the reserve price set by the Debtor. Hilco continued to negotiate with the high bidders to arrive at a sale price acceptable to the Debtor and the prospective buyer. On April 1, 2016, the Debtor and PLATINUM SA PROPERTIES, LLC ("Platinum") signed a Purchase and Sale Agreement providing for a purchase price in the amount of \$1,425,000, which included a purchaser's premium equal to 6% payable to Hilco.

12. The Debtor filed a motion seeking authority to sell the Property to Platinum. Prior to the hearing date on that motion, Platinum withdrew its offer and the motion was denied without prejudice.

13. Prior to entry of the order dismissing the motion to sell to Platinum, the Debtor received an offer to purchase the Property from the Purchaser. The Debtor and the Purchaser have negotiated the terms of a contract to purchase the Property at arm's length. The Purchaser proposes to purchase the Property for \$2,000,000. A true and correct copy of the PSA is attached to the Motion as Exhibit "A".

RELIEF REQUESTED

13. By this Motion, Debtor requests that the court enter an Order (the "Sale Order"), authorizing Debtor to (i) sell substantially all of the Property, free and clear of all liens, claims, and interests (other than certain specified assumed liabilities), on substantially the terms set forth in the PSA; (ii) assume certain of the executory contracts and unexpired leases associated with Debtor's business (the "Assigned Contracts"); (iii) assign the Assigned Contracts to Purchaser; and (iv) allow Purchaser or the Successful Bidder to pay the amounts, if any, necessary to cure existing defaults or arrearages under the Assigned Contracts.

BASIS FOR RELIEF

A. Background

14. The PSA contemplates a sale of the Property to the Purchaser or its designee. Debtor believes the sale of the Property is in the best interest of Debtor's estate and creditors. The Property is vacant and exposed to damage or loss. The lienholders have not taken any action to foreclose upon their respective liens. It does not appear that the secured creditors are in any hurry to take title to the Property. The value of the Property has declined precipitously since the date of the closing of the Construction Loan and the date that hotel operations commenced. In the absence

of any meaningful recovery in the price of oil, the value of the Property is unlikely to improve. To the contrary, left in its current state, there is a real risk that the value of the Property will decline further. Moreover, the passage of time Accordingly, Debtor seeks approval of the PSA and the Sale Order.

B. The Asset Purchase Agreement

15. Pursuant to the PSA, Debtor will (i) sell the Property free and clear of all liens, claims, interests, and encumbrances and (ii) assume and assign to Purchaser the Assigned Contracts.

16. The PSA was negotiated at arm's length and in good faith by the Debtor and Purchaser. Debtor believes the consideration to be received from the Property as set forth in the PSA will result in the highest and best value for Debtor's estate.

17. The executed PSA generally provides the following:

- a) Purchase Price. On the Closing Date, Purchaser will (i) pay to Debtor Two Million Dollars (\$2,000,000.00) in cash, and (ii) assume certain liabilities of Debtor relating to the Assigned Contracts.
- b) Property. The proposed sale will include the Property (as more specifically defined in the PSA), which comprises substantially all of the property of the Debtor's estate.
- c) Sale Free and Clear. The Property is to be transferred free and clear of all liens, interests, claims, or encumbrances in the Property other than the Assumed Liabilities pursuant to section 363(f) of the Bankruptcy Code.
- d) Conditions to Closing. Conditions to consummation of the Asset Sale will include, among other things entry of the Sale Order which shall become a final order.

This summary of the PSA is intended to be for convenience only. To the extent the summary differs from the actual terms of the PSA, the terms of the PSA shall be controlling.

C. Notice of Sale Hearing

18. Debtor will serve a copy of this Motion and a notice of the date set for a hearing on

the Motion (the “Sale Hearing”) upon (i) the Office of the United States Trustee; (ii) counsel for the any party asserting a lien against the Property; (iii) counsel for Purchaser; (iv) all federal, state, and local regulatory or taxing authorities or recording offices that have a known interest in the Property; (v) the creditors identified on the Debtor’s List of Creditors; and (vi) all other entities that have filed requests for notices pursuant to Bankruptcy Rule 2002.

D. Assumption and Assignment of Contracts

19. As part of the Motion, Debtor also seeks authority to assume and assign the Assigned Contracts to Purchaser.

20. With respect to the Assigned Contracts, Debtor will file with the Court and serve on each party to an Assigned Contract notice of Debtor’s intention to assume and assign that party’s contract to Purchaser (the “Assignment Notice”). Debtor will mail the Assignment Notice and within ten days after the date upon which the Court enters the Sale Order. The Assignment Notice will provide the contracting parties with an opportunity to object to the assumption and assignment. If an objection to the assumption and assignment is made, the Debtor will file pleadings requesting a hearing on such objection prior to the Closing Date.

21. The effective date of any assumption and assignment of any Assumed Contract shall be the Closing Date. Accordingly, any Cure Amounts to be paid under any Assumed Contract will also be paid upon the closing of the Asset Sale or as soon thereafter as the Cure Amount is fixed.

APPLICABLE AUTHORITY

A. The Asset Sale Is Within Debtor’s Sound Business Judgment.

22. Bankruptcy Code section 363(b)(1) provides, in relevant part: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” Bankruptcy Code section 105(a) provides in relevant part: “The court may issue

any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

23. The Fifth Circuit has set forth the standard for the authorization of sales pursuant to section 363 in *International Creditors of Continental Air Lines, Inc. v. Continental Airlines Inc. (In re Continental Airlines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986). The assets to be sold must be property of the debtor’s estate. *Continental Air Lines, Inc.*, 780 F.2d at 1226. Additionally, there must exist a valid “business justification” for the sale. *Id.* In determining whether there is sufficient business justification for the sale, the court

should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. He might, for example, look to such relevant factors as the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

Id. (quoting *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d. Cir. 1983); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 145–47 (3d Cir. 1986) (adding “good faith” requirement to *Lionel’s* test).

24. Debtor believes the Sale is the best way to preserve the value of the Property and maximize the value of Debtor’s estate for the benefit of Debtor’s creditors and other parties in interest.

B. The Sale of the Property Satisfies the Sound Business Purpose Test.

25. There is more than adequate business justification to sell the Property to Purchaser. As set forth above, Debtor believes the proposed PSA maximizes recovery to the estate. *See In re Tempo Technology Corp.*, 202 B.R. 363 (D. Del. 1996), *aff’d*, 141 F.3d 1155 (3d Cir. 1998) (sale

of substantially all of a chapter 11 debtor's assets pursuant to a section 363(b) motion where the debtor "faced a severe cash shortfall and had no readily available source of investment capital or loans," and would shortly have run out of cash absent the debtor-in-possession financing provided by the prospective Purchaser); *see also, In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 177 (D. Del. 1991) (affirming bankruptcy court's approval of sale of substantially all assets where debtor would have been "in liquidation mode if required to delay a sale until after filing a disclosure statement and obtaining approval for a reorganization plan"); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396 (Bankr. W.D. Pa. 1991) (bankruptcy court granted expedited hearing on 363(b) motion based on "deterioration" of debtor's assets); *Coastal Indus., Inc. v. IRS (In re Coastal Indus., Inc.)*, 63 B.R. 361, 366–69 (Bankr. N.D. Ohio 1986) (approving expedited 363(b) sale five weeks post-petition to buyer with "the name recognition required by [the debtor's] customers" where debtor was suffering operating losses and lacked financing to continue its operations).

26. Based upon an analysis of Debtor's ongoing and future business prospects, Debtor's management has concluded that, given the Debtor's continuing cash losses and its inability to obtain additional financing to fund operating losses until the economy recovers, the best way to maximize the value of Debtor's estate is to sell its assets immediately, thereby avoiding a foreclosure sale of Debtor's Property by its secured creditors.

27. Purchaser has offered substantial value for the Property and is willing to close quickly, and thereby enable Debtor to reduce the risk that the value of the Property will deteriorate. Moreover, by selling the Property now, Debtor will relieve itself of certain ongoing costs and expenses, thereby minimizing administrative expenses and maximizing creditor recoveries. Accordingly, well-articulated business reasons exist for approving the PSA, such that the "business purpose" test under Bankruptcy Code section 363 is met. *See Lionel*, 722 F.2d at 1071 ("[M]ost

important perhaps, [is] whether the asset is increasing or decreasing in value.”).

C. The Consideration Offered by Purchaser is Fair and Reasonable.

28. Debtor submits that a sale of the Property pursuant to the PSA will provide fair and reasonable consideration to Debtor’s estate. The PSA requires Purchaser to pay Two Million Dollars (\$2,000,000.00) for the Property as well as to assume certain liabilities. Debtor respectfully submits that such consideration in exchange for the Property is both fair and reasonable. Accordingly, the consideration to be paid for the Property is both fair and reasonable and should be deemed to have satisfied the strictures of Bankruptcy Code section 363(n).

D. The PSA Was Negotiated in Good Faith.

29. The PSA is the product of extensive arm’s length negotiations between Purchaser and Debtor. These negotiations have involved substantial time and energy by the parties and their professionals, and the PSA reflects give-and-take and compromises by both sides.

E. Adequate Notice of the Asset Sale is Being Provided.

30. The final element for the approval of a sale under Bankruptcy Code section 363 is the requirement that interested parties receive adequate notice. Given the number of creditors and the urgent nature of the relief requested, Debtor intends to serve this Motion (i) the Office of the United States Trustee; (ii) counsel for the Prepetition Lender; (iii) counsel for Purchaser; (iv) all federal, state, and local regulatory or taxing authorities or recording offices that have a known interest in the Property; (v) the creditors identified on the Debtor’s List of Creditors; and (vi) all other entities that have filed requests for notices pursuant to Bankruptcy Rule 2002.

31. Debtor submits that such notice is reasonable and appropriate pursuant to Bankruptcy Rule 2002(a) because it will enable Debtor to comply with the deadlines set forth in the PSA.

F. The Proposed Sale was Negotiated in Good Faith

32. The proposed sale and the PSA were negotiated in good faith. The Purchaser is not an insider or affiliate of the Debtor, and the proposed sale and PSA have been negotiated at arm's length and in good faith. The Proposed Sale represents the highest and best offer received and represents the market value of the Property. Accordingly, the Debtor requests that the Court make a finding that the Purchaser is entitled to the protections of Section 363(m) of the Bankruptcy Code.

33. Section 363(m) of the Bankruptcy Code provides that “[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith. . . .” 11 U.S.C. § 363(m) (emphasis added).

34. To demonstrate a lack of good faith there must be a showing of fraud or collusion between the purchaser and the debtor or trustee. *Bleaufontaine, Inc. v. Roland Int'l (In re Bleaufontaine, Inc.)*, 634 F.2d 1383, 1388 n. 7 (5th Cir. 1981) (“[t]ypically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”). No such facts exist here.

G. The Sale Satisfies the Requirements of Bankruptcy Code Section 363(f) for a Sale Free and Clear of Liens, Encumbrances, and Interests.

35. Under Bankruptcy Code section 363(f), a debtor in possession may sell property of the estate free and clear of any lien or interest of an entity in such property if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

36. Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice as justification to approve the sale of the Property free and clear of liens and other interests (collectively, the “Interests”). *See* 11 U.S.C. § 363(f); *Mich. Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343 (E.D. Pa. 1988) (same).

37. Debtor believes that the only lienholders on the Property are the SBA and Commerce Bank. The SBA and Commerce Bank are aware of the proposed sale. The purchase price proposed in the PSA equals or exceeds the amount of the secured claims as defined under section 506(a). *In re Terrace Gardens Park Partnership*, 96 B.R. 707 (Bankr. W.D. Tex. 1989). Accordingly, the Debtor submits that one or more of the subsections of Bankruptcy Code section 363(f) applies, and that any such Interest will be adequately protected by having it attach to the net proceeds of the sale, subject to any claims and defenses Debtor may possess with respect thereto.

38. Accordingly, the sale should be approved under Bankruptcy Code section 363(f).

H. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized.

39. Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if:

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

40. Under Bankruptcy Code section 365(a), a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Bankruptcy Code section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

41. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, and should be given practical, pragmatic construction. *EBG Midtown S. Corp. v. McLaren/Hart Envtl. Eng’g. Corp. (In re Sanshoe Worldwide Corp.)*, 139

B.R. 585, 593 (S.D.N.Y. 1992); *see In re Prime Motor Inns, Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

42. Among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

43. As set forth in the PSA, to the extent any defaults exist under any executory contract or unexpired lease that is assumed and assigned, Debtor will cure any such default in connection with the assumption and assignment.

44. Moreover, Debtor will adduce facts at the Sale Hearing to show the financial wherewithal of either Purchaser, experience in the industry, and willingness and ability to perform under the contracts to be assumed and assigned to it.

45. The Sale Hearing will therefore provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of Purchaser to provide adequate assurance of future performance under the contracts to be assumed, as required under Bankruptcy Code section 365(b)(1)(C). The Court should therefore authorize Debtor to assume and assign contracts as set forth herein.

I. Waiver or Reduction of the Fourteen Day Stay Period Required By Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure

46. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically

stayed for 14 days after the entry of the order. The purposed of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. See Advisory Committee Notes to the Bankruptcy Rule 6004(h).

47. Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes do not address when a court should eliminate or reduce the 14 day stay period, Collier on Bankruptcy suggests that the 14 day (formerly 10 day) stay period should be eliminated to allow a sale to close immediately “where there has been no objection to the procedure” 10 COLLIER ON BANKRUPTCY ¶¶ 6004.09, 6006.05 (Resnick & Sommer, 16th rev. ed. 2013). If an objection has been filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such an appeal. See *Id.*

48. To preserve the value of the Property and to limit the costs of preserving such Property, it is critical that the Debtor close the Proposed Sale as soon as possible after all closing conditions have been met or waived. No party will be harmed by waiver of the appeal period. Accordingly, the Debtor requests that the Court waive the 14 day stay period under Bankruptcy Rule 6004(h) or in the alternative, if an objection to the proposed sale is filed, reduce the stay periods to the minimum time needed by the objecting party to file its appeal to allow the proposed sale to close as provided for under the PSA.

49. Based on the forgoing, the Debtor submits that the relief requested herein is necessary and appropriate, is in the best interest of the Debtor and its estate, and should be granted in all respects.

CONCLUSION

WHEREFORE, Debtor respectfully requests that this Court enter an order (a) approving the PSA; (b) authorizing Debtor to (i) sell the Property free and clear of all Interests; (ii) assume

and assign the Assigned Contracts; and (c) finding that the Purchaser is a good faith purchaser under Section 363(m); (d) waiving the 14 day stay period under Bankruptcy Rule 6004(g); and (e).granting such other and further relief as is just and proper.

Respectfully submitted September 8, 2016.

THE LAW OFFICES OF RAY BATTAGLIA, PLLC.
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Telephone (210) 601-9405
Email: rbattaglia@outlook.com

By: /s/ Raymond W. Battaglia
Raymond W. Battaglia
Texas Bar No. 01918055

ATTORNEYS FOR HOTELWORKS
DEVELOPMENT, LLC

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was filed with the Court and served electronically upon those parties registered to receive electronic notice via the Court's CM/ECF system, as set forth below. I further certify that it has been transmitted by first class mail to the parties on the attached service list

/s/ Raymond W. Battaglia

TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - IMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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PARTIES: Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: HotelWorks Development LLC

Address: 2727 Revere # 2038, Houston, TX 77098

Phone: (512) 296-8999

E-mail: bobzachariah@hotelworksdev.com

Fax: _____ Other: rbattagliaw@outlook.com

Buyer: Lawrence Friedman Trustee and or Assigns

Address: 1016 Grant St., Laredo, Tx 78040

Phone: (956) 712-3478

E-mail: sirlarry@aol.com

Fax: (956) 712-0253

Other: _____

PROPERTY:

A. "Property" means that real property situated in La Salle County, Texas at 165 Mars Drive, Cotulla, Texas 78014 (address) and that is legally described on the attached Exhibit A or as follows:

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

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

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

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

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

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

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

- A. Cash portion payable by Buyer at closing\$ 2,000,000.00
- B. Sum of all financing described in Paragraph 4\$ _____
- C. Sales price (sum of 3A and 3B)\$ 2,000,000.00

TAR-1801) 1-1-16

Initialed for Identification by Seller BLZ and Buyer [Signature]

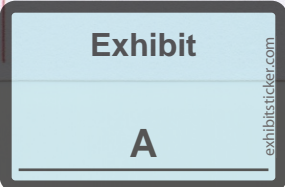
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Lawrence Friedman Real Estate Brokerage & Investments 1016 Grant Laredo, TX 78040
Phone: 9567123478

Fax: 9567120253 Lawrence Friedman

SF HotelWorks

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com



exhibitsticker.com

Commercial Contract - Improved Property concerning 165 Mars Drive, Cotulla, Texas 78014

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

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

EARNEST MONEY:

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 10,000.00 as earnest money with Stewart Title Co. (title company) at 1016 Monaco Blvd. Laredo, Tx 78045 (address) Evan Gutierrez (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ 50,000.00 with the title company to be made part of the earnest money on or before:
 - (i) 2 days after Buyer's right to terminate under Paragraph 7B expires; or
 - (ii) _____ .
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

TITLE POLICY, SURVEY, AND UCC SEARCH:

- A. Title Policy:
 - (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
 - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
 - (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
 - (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
 - (3) Within 15 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

Initialed for Identification by Seller [Signature] and Buyer [Signature]

Commercial Contract - Improved Property concerning 165 Mars Drive, Cotulla, Texas 78014

B. Survey: Within 15 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer -0- (insert amount) of the cost of the survey at closing, if closing occurs.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller _____ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- (1) Within 15 days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.
- (2) Buyer does not require Seller to furnish a UCC search.

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

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

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PROPERTY CONDITION:

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

B. Feasibility Period: Buyer may terminate this contract for any reason within 45 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 500.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

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

C. Inspections, Studies, or Assessments:

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

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

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

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

D. Property Information:

(1) Delivery of Property Information: Within 15 days after the effective date, Seller will deliver to Buyer: (Check all that apply.)

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

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

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

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

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

3. **LEASES:**

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

- (1) any failure by Seller to comply with Seller's obligations under the leases;

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

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

BROKERS:

A. The brokers to this sale are:

Principal Broker: HILCO Real Estate LLC

Cooperating Broker: Lawrence Friedman Real Estate Brokerage & Investments

Agent: _____

Agent: _____

Address: 5 Revere Drive Suite 420
Northbrook, Il. 60062

Address: 1016 Grant St.
Laredo, Texas 78040

Phone & Fax: (847) 418-2725

Phone & Fax: (956) 712-3478 (956) 712-0253

E-mail: _____

E-mail: sirlarry@aol.com

License No.: _____

License No.: 0284263

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

Cooperating Broker represents Buyer.

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

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

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

Principal Broker a total cash fee of:
 0.500 % of the sales price.
 \$21,186.00 Marketing Fee

Cooperating Broker a total cash fee of:
 5.000 % of the sales price.

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

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

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

D. CLOSING:

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

(1) 10 days after the expiration of the feasibility period.

_____ (specific date).

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

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

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

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

(2) without any assumed loans in default; and

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

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

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

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

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

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

(a) licenses and permits;

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

(c) warranties and guaranties;

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

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

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

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

E. At closing, Buyer will:

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

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

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

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

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

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- (4) sign an assumption of all leases then in effect; and
- (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

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

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

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

- 1) Buyer is a Licsense Real Estate Broker acting as a Principal.
- 2) At the end of the feasibility study, Buyer has the option to extend the feasibility for an additional 45 days, by depositing \$50,000.00 nonrefundable earnest money with the title company which will be credited towards the purchase price.
- 3) Special Provisions Addendum to Commercial Contract -Improved Property- Attached as Exhibit B
- 4) Seller & Buyer are aware of the Bankruptcy Case

13. SALES EXPENSES:

- A. Seller's Expenses: Seller will pay for the following at or before closing:
 - (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
 - (2) release of Seller's loan liability, if applicable;
 - (3) tax statements or certificates;
 - (4) preparation of the deed and any bill of sale;
 - (5) one-half of any escrow fee;
 - (6) costs to record any documents to cure title objections that Seller must cure; and
 - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
 - (1) all loan expenses and fees;
 - (2) preparation fees of any deed of trust;
 - (3) recording fees for the deed and any deed of trust;
 - (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
 - (5) one-half of any escrow fee; and
 - (6) other expenses that Buyer will pay under other provisions of this contract.

Initialed for Identification by Seller PACZ and Buyer AT

4. PRORATIONS:

A. Prorations:

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

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

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

15. DEFAULT:

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

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

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

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

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

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

16. CASUALTY LOSS AND CONDEMNATION:

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

- (1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;
- (2) extend the time for performance up to 15 days and closing will be extended as necessary; or
- (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.

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

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

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

18. ESCROW:

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

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feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

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

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

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

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

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

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

22. AGREEMENT OF THE PARTIES:

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

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D. Addenda which are part of this contract are: (Check all that apply.)

- (1) Property Description Exhibit identified in Paragraph 2;
- (2) Commercial Contract Condominium Addendum (TAR-1930);
- (3) Commercial Contract Financing Addendum (TAR-1931);
- (4) Commercial Property Condition Statement (TAR-1408);
- (5) Commercial Contract Addendum for Special Provisions (TAR-1940);
- (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TAR-1906);
- (7) Notice to Purchaser of Real Property in a Water District (MUD);
- (8) Addendum for Coastal Area Property (TAR-1915);
- (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
- (10) Information About Brokerage Services (TAR-2501); and
- (11) Special Provisions Addendum to Commercial Contract-Improved Property- Attached as Exhibit B

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

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

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

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

25. **ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.

Commercial Contract - Improved Property concerning 165 Mars Drive, Cotulla, Texas 78014

- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.
- H. Section 1958.154, Occupations Code requires Seller to provide Buyer a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the Seller sells the Property.
- I. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.
- J. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

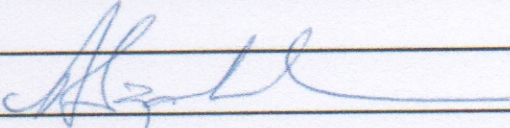
26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on September 12, 2016, the offer will lapse and become null and void.

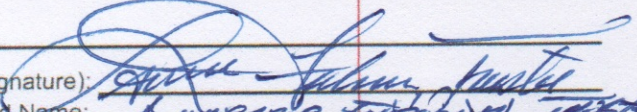
READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT** your attorney **BEFORE** signing.

Lawrence Friedman Trustee and or

Seller: HotelWorks Development LLC

Buyer: Assigns

By: 
 By (signature): _____
 Printed Name: BOB ZACHARIAH
 Title: PRES + CEO

By: _____
 By (signature): 
 Printed Name: Lawrence Friedman, Trustee
 Title: Trustee

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

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

Commercial Contract - Improved Property concerning 165 Mars Drive, Cotulla, Texas 78014

AGREEMENT BETWEEN BROKERS

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

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

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

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

Principal Broker: _____ Cooperating Broker: _____

By: _____ By: _____

ATTORNEYS

Seller's attorney: _____ Buyer's attorney: David Taney

Address: _____ Address: 6100 Hollywood Blvd. 7th Floor

Phone & Fax: _____ Phone & Fax: (954) 986-7770 (954) 965-6840

E-mail: _____ E-mail: DTaney@dutyfreeamericas.com

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

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

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

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

ESCROW RECEIPT

The title company acknowledges receipt of:

- A. the contract on this day _____ (effective date);
- B. earnest money in the amount of \$ _____ in the form of _____ on _____.

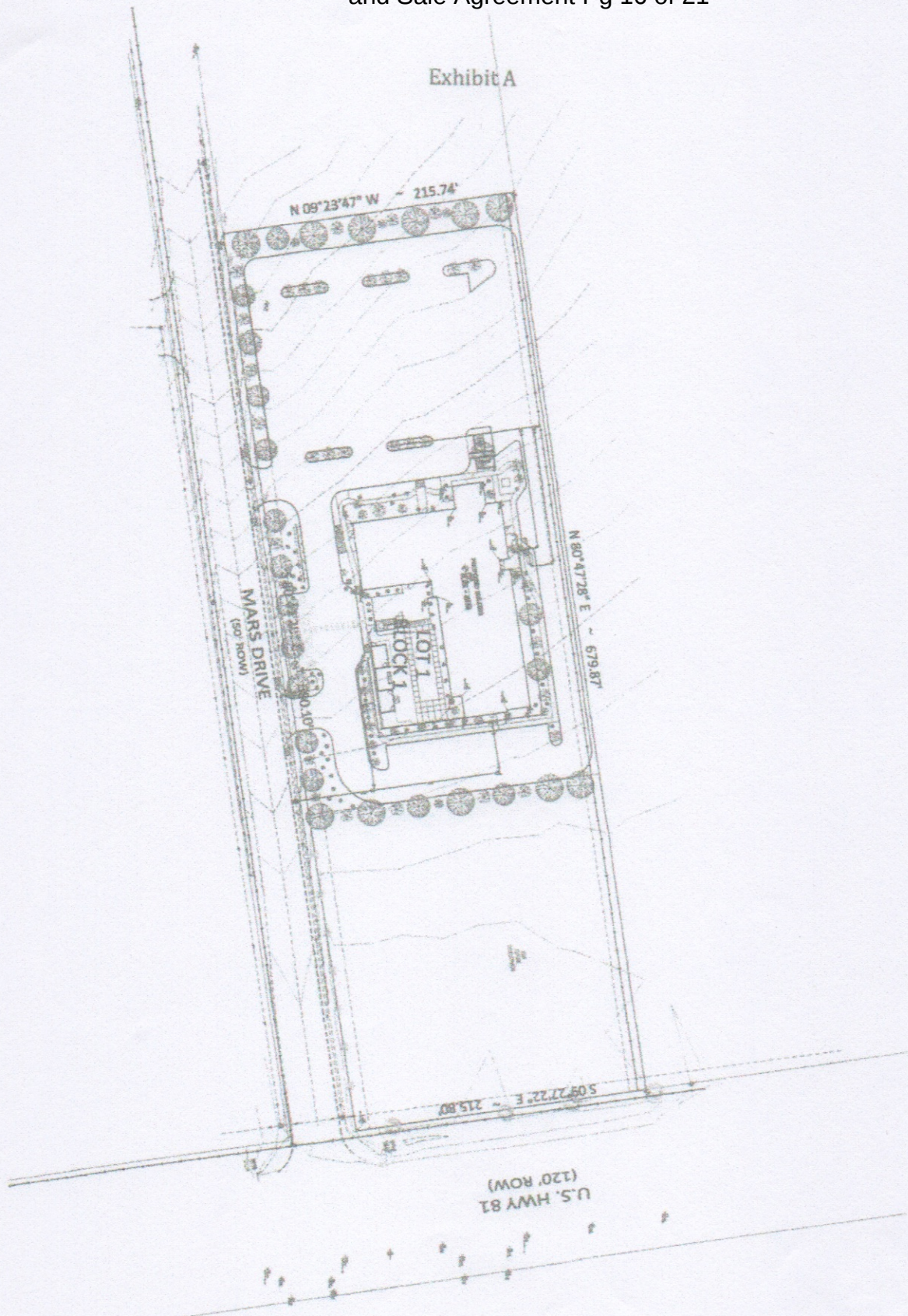
Title company: _____ Address: _____

By: _____ Phone & Fax: _____

Assigned file number (GF#): _____ E-mail: _____

DKZ

Exhibit A



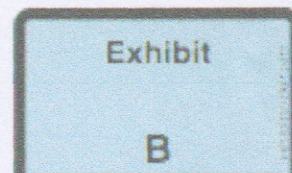
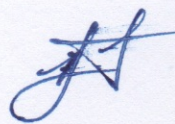
Special Provisions Addendum to Commercial Contract – Improved Property

This Special Provisions Addendum (this “Addendum”) amends and supplements the Commercial Contract – Improved Property (together with the exhibits, addenda, and other attachments thereto, the “Base Contract”; the Base Contract as modified or supplemented by this Addendum, the “Contract”) by and between HotelWorks Development LLC, a Texas limited liability company (“Seller”), and Lawrence Friedman, Trustee (“Buyer”), regarding the real property located at 165 Mars Drive, Cotulla, Texas 78014, as more particularly described therein. To the extent that the terms of this Addendum conflict with the terms of the Base Contract, the terms of this Addendum shall control. Terms used but not otherwise defined herein have the meanings ascribed to such terms in the Base Contract.

Notwithstanding anything to the contrary contained in the Base Contract, Buyer and Seller agree as follows:

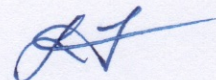
1. Property Documents. In permitting Buyer to review the items described in Paragraph 7D(1) of the Base Contract and other information (collectively, the “Property Documents”), Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third-party benefits or relationships of any kind either express or implied have been offered, intended or created by Seller, and any such claims are expressly rejected by Seller and waived by Buyer. Buyer acknowledges that some of the Property Documents may have been prepared by third parties and may have been prepared prior to Seller’s ownership of the Property. BUYER HEREBY ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE (AND BUYER IS NOT RELYING UPON) ANY REPRESENTATION OR WARRANTY REGARDING THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR THE SOURCES THEREOF EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS CONTRACT. SELLER HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION AS TO THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS AND IS PROVIDING THE DOCUMENTS SOLELY AS AN ACCOMMODATION TO BUYER. Notwithstanding anything to the contrary in the Base Contract, Seller shall have no obligation to deliver to Buyer any Property Document which is not in the possession or control of Seller. This Paragraph survives closing or the earlier termination of the Contract.

2. AS-IS. THE TRANSACTION CONTEMPLATED BY THIS CONTRACT HAS BEEN NEGOTIATED BETWEEN SELLER AND BUYER. THIS CONTRACT REFLECTS THE MUTUAL AGREEMENT OF SELLER AND BUYER, AND BUYER HAS THE RIGHT TO CONDUCT ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY. OTHER THAN THE MATTERS EXPRESSLY REPRESENTED IN THE CONTRACT, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER’S AGENTS OR REPRESENTATIVES, AND BUYER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SPECIFICALLY DISCLAIMS, AND NEITHER SELLER NOR ANY OF ITS REPRESENTATIVES NOR ANY OTHER PERSON IS MAKING, AND BUYER IS NOT RELYING UPON, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO BUYER, AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS



OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY BUYER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING (i) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (ii) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (iv) ANY RIGHTS OF BUYER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (v) ANY CLAIM BY BUYER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, WITH RESPECT TO THE IMPROVEMENTS OR THE PERSONAL PROPERTY, (vi) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY AND (vii) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, INCLUDING HAZARDOUS SUBSTANCES LAWS, NOW EXISTING OR HEREAFTER ENACTED OR PROMULGATED, IT BEING THE EXPRESS INTENTION OF SELLER AND BUYER THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO BUYER IN ITS PRESENT CONDITION AND STATE OF REPAIR, **“AS IS, WHERE IS, WITH ALL FAULTS”**. BUYER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE “AS IS, WHERE IS” NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY. BUYER, WITH BUYER’S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS CONTRACT AND UNDERSTANDS THE SIGNIFICANCE OF EACH AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS CONTRACT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS CONTRACT. BUYER, ON BEHALF OF IT AND ITS AFFILIATES, FURTHER COVENANTS AND AGREES NOT TO SUE SELLER AND ITS AGENTS, DIRECTORS, PARTNERS, MEMBERS, OFFICERS, EMPLOYEES, SUCCESSORS AND ASSIGNS (THE “SELLER PARTIES”) AND RELEASES SELLER AND THE SELLER PARTIES OF AND FROM AND WAIVES ANY CLAIM OR CAUSE OF ACTION, INCLUDING ANY STRICT LIABILITY CLAIM OR CAUSE OF ACTION, THAT BUYER OR ITS AFFILIATES MAY HAVE AGAINST SELLER OR THE SELLER PARTIES UNDER ANY HAZARDOUS SUBSTANCES LAWS, NOW EXISTING OR HEREAFTER ENACTED OR PROMULGATED, RELATING TO HAZARDOUS SUBSTANCES, ENVIRONMENTAL MATTERS OR ENVIRONMENTAL CONDITIONS IN, ON, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE PROPERTY, INCLUDING CERCLA, SARA AND RCRA, OR BY VIRTUE OF ANY COMMON LAW RIGHT, NOW EXISTING OR HEREAFTER CREATED, RELATED TO HAZARDOUS SUBSTANCES, ENVIRONMENTAL CONDITIONS OR ENVIRONMENTAL MATTERS IN, ON, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE PROPERTY. This Paragraph survives closing or the earlier termination of the Contract.

3. Damages; Election of Remedies. Notwithstanding anything to the contrary set forth in the Contract (including without limitation Paragraph 15 of the Base Contract), Buyer expressly waives its rights to seek damages if Seller defaults hereunder. Buyer shall be deemed to have elected to terminate this Contract and receive back the Earnest Money in accordance with Paragraph 15C of the Base Contract



if Buyer fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located on or before 30 days following the scheduled Closing Date. This Paragraph survives closing or the earlier termination of the Contract.

4. Knowledge. The word “aware”, as used in Paragraph 19 of the Base Contract with reference to Seller, means the actual conscious (and not constructive) knowledge of Bob Zachariah ¹, as of the Effective Date, without duty of investigation or inquiry and without imputing any personal liability to such individual. This Paragraph survives closing or the earlier termination of the Contract.

5. Bankruptcy Matters.

(a) Seller is a [debtor and debtor-in-possession in a chapter 11 case pending in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the “Bankruptcy Court”), Case No. 16-51527CAG (the “Bankruptcy Case”). As such, the Property is being sold pursuant to this Contract, and the sale of the Property is subject to the Bankruptcy Court’s approval. As a result of arm’s length negotiations between Seller and Buyer culminating in this Contract, Seller is selling the Property to Buyer free and clear of (i) all liens, interests, claims, or encumbrances in the Property, and (ii) successor liability of Sellers, pursuant to 11 U.S.C. § 363(f) of the United States Bankruptcy Code (the “Bankruptcy Code”),² and this provision controls over any conflicting language contained in this Contract. In addition, if there is any conflict between terms of this Contract and any order issued by the Bankruptcy Court, the Bankruptcy Court’s order shall supersede the terms in this Contract. The representation set forth in Paragraph 19B(2) of the Base Contract is qualified by reference to the pendency of the Bankruptcy Case.

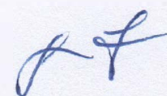
(b) At Closing, Buyer shall assume in accordance with the Bankruptcy Code any executory contracts purchased by Buyer under the Contract.

(c) The obligations of both Buyer and Seller to close the purchase and sale contemplated by the Contract are subject to the conditions precedent that (I) an order (the “Sale Order”) shall have been entered by the Bankruptcy Court approving this Contract and the transactions contemplated hereby, and (II) the Sale Order shall have become a Final Order; for the purposes hereof, an order is a “Final Order” if such order has not been vacated and is not then subject to a stay of proceedings, and either (i) the time to file an appeal, a motion for rehearing or reconsideration or a petition for writ of certiorari with respect to such order has expired and no such appeal, motion or petition is pending, or (ii) a petition for writ of certiorari has been finally decided and no further appeal, motion for rehearing or reconsideration, or a petition for writ of certiorari can be taken or granted as to such order.

(d) Buyer shall promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order, such as furnishing affidavits, non-confidential financial information, confidential information subject to a reasonable form of confidentiality agreement or other documents or information for filing with the Bankruptcy Court and making its representatives available to be interviewed by Seller’s attorneys and to testify before the Bankruptcy Court and at depositions. If a

¹ RB – who would be the appropriate “knowledge” person for this seller?

² RB to confirm.



written objection is filed to the motion seeking approval of this Contract, which is an objection that would prohibit or otherwise prevent the Closing from occurring pursuant to the terms of this Contract, Seller and Buyer shall use reasonable efforts to have such objection overruled. In the event the Sale Order is appealed, Seller and Buyer shall each use their respective reasonable efforts to defend such appeal or, by mutual written agreement, close the transactions contemplated hereby unless such closing is stayed by the Bankruptcy Court.

(e) The sale of the Property under Section 363(f) of the Bankruptcy Code free and clear of any encumbrances in Schedule C of the title commitment shall be deemed to be a satisfactory cure of such encumbrances.

6. Brokers. Buyer agrees that should any claim be made for brokerage commissions or finder's fees by any broker or finder (other than the cooperating broker listed in the Base Contract) by, through or on account of any acts of Buyer or its representatives, and affiliates, Buyer shall indemnify, defend, protect and hold Seller free and harmless from and against any and all loss, liability, cost, damage and expense in connection therewith. The provisions of this Paragraph shall survive Closing or earlier termination of this Contract.

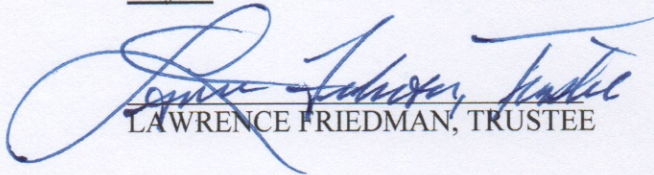
7. Counterparts. The Base Contract and this Addendum each may be executed in counterparts, and all such executed counterparts shall constitute the same Contract.

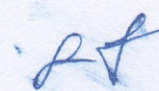
Seller:

HOTELWORKS DEVELOPMENT, LLC

By: _____
Name: _____
Title: _____

Buyer:


LAWRENCE FRIEDMAN, TRUSTEE



written objection is filed to the motion seeking approval of this Contract, which is an objection that would prohibit or otherwise prevent the Closing from occurring pursuant to the terms of this Contract, Seller and Buyer shall use reasonable efforts to have such objection overruled. In the event the Sale Order is appealed, Seller and Buyer shall each use their respective reasonable efforts to defend such appeal or, by mutual written agreement, close the transactions contemplated hereby unless such closing is stayed by the Bankruptcy Court.


(e) The sale of the Property under Section 363(f) of the Bankruptcy Code free and clear of any encumbrances in Schedule C of the title commitment shall be deemed to be a satisfactory cure of such encumbrances.

6. Brokers. Buyer agrees that should any claim be made for brokerage commissions or finder's fees by any broker or finder (other than the cooperating broker listed in the Base Contract) by, through or on account of any acts of Buyer or its representatives, and affiliates, Buyer shall indemnify, defend, protect and hold Seller free and harmless from and against any and all loss, liability, cost, damage and expense in connection therewith. The provisions of this Paragraph shall survive Closing or earlier termination of this Contract.

7. Counterparts. The Base Contract and this Addendum each may be executed in counterparts, and all such executed counterparts shall constitute the same Contract.

Seller:

HOTELWORKS DEVELOPMENT, LLC

By: 
Name: BOB ZACHARIA
Title: PRES / CEO

Buyer:

LAWRENCE FRIEDMAN, TRUSTEE