

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

In Re: Jeanette M. Gutierrez

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§

Case No. 15-52100g

DEBTOR

Chapter 11

**MOTION FOR AUTHORITY TO SELL PROPERTY
FREE AND CLEAR OF LIENS**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO
YOUR INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY ONE (21) DAYS
FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY
BE GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE
HELD.**

COMES NOW, Jeanette M. Gutierrez, the above-named Debtor and in accordance with Federal Rule of Bankruptcy Procedure 6004 shows as follows:

1. On 8/31/2015, the above-named Debtor filed a Voluntary Petition for Relief under Chapter 13 of the United States Bankruptcy Code.
2. The Debtor is the owner of real property located at 7272 Culebra, San Antonio, Texas 78251.
3. The Debtor proposes to sell free and clear of all liens, claims, and encumbrances, and in accordance with the Federal Rule of Bankruptcy Procedure 6004 and 11 U.S.C. Section 363, the real property, which is more particularly described as Lot 29, Block 1, New City Block 18289, 7272 Culebra Subdivision, recorded in the Real Property Records of Bexar County, Texas ("Property").
4. This is a private sale, wherein the Debtor proposes to transfer her interest in the Property to Mesquite Country Real Estate, LLC, 9002 North Maryland, Niles, IL 60714, pursuant to the terms of an earnest money contract attached hereto as Exhibit "A" and incorporated herein by reference.
5. Pursuant to 11 U.S.C. Section 363(c) and (f), the Debtor's desire to sell the Property free and clear of any interest other than that of the estate with all valid liens, claims, or encumbrances to attach the proceeds of such sale. The Debtor is informed and believes that the Property is encumbered by the following liens:

1) Bexar County Texas	\$24,824.00
2) Jefferson Bank	\$175,951.00.
3) Internal Revenue Service	\$1,202,586.00

Each of these entities will be served a copy of this Motion.

6. The purchase price set forth in the Purchase Agreement is \$800,000.00 with \$30,000.00 paid in advance and the remaining balance to be paid in cash at closing.

7. The Debtor estimates that closing costs will total approximately \$6,030.00 and real estate commission will total \$48,000.00. After satisfying the mortgage lien of Jefferson Bank, and after payment of closing costs, real estate commission, property taxes, and other costs applicable to the closing of the sale, Debtor anticipates that there will be approximately \$545,195.00 from this sale available for payment to the Internal Revenue Service. The Debtor proposes that the net sales proceeds be paid to the lien holders in the order set forth in paragraph 5 above.

8. The estimated or possible tax consequences to the estate resulting from this sale are none.

9. The Debtor believes that the proposed purchase price for the Property is fair and reasonable.

10. The Debtor further requests that the order authorizing the sale not be stayed pursuant to Bankruptcy Rule 6004(g).

WHEREFORE, Debtor requests that this Court, after hearing on notice pursuant to Federal Rules of Bankruptcy Procedure 2002, 6004, and 9014, approve this sale of Property as set forth herein and authorize the Debtor to proceed in accordance with the earnest money contract, and that the Debtor have such other and further relief as is just and proper.

Respectfully submitted,

Law Office of David T. Cain
8610 N. New Braunfels Ave., Ste. 309
San Antonio, Texas 78217
(210) 308-0388; (Fax) 341-8432

_____/s/ David T. Cain_____
David T. Cain
State Bar No. 03598800

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2016 a true and correct copy of the above and foregoing was served upon the following parties via electronic means as listed on the Court's ECF Noticing System or by regular first class mail:

Jeanette M. Gutierrez
4631 Del Mar Trail
San Antonio, TX 78251

U.S. Trustee
P.O. Box 1539
San Antonio, TX 78295-1539

... and to all creditors listed below.

_____/s/ David T. Cain_____
David T. Cain

American Express Bank
Po Box 650448
Dallas, Tx75265

Best Buy
Attn.: Bankruptcy Dept.
P.O. Box 543
Carol Stream, IL 60197

Bexar County
c/o Don Stecker
711 Navarro, #300
San Antonio, TX 78205

Community National Bank
1502 Ave M
Hondo, Tx78861

Community National Bank
c/o Ronnie Miller, President
P.O. Box 130
Hondo, TX 78861

Community National Bank
c/o Elizabeth G. Smith
6655 First Park Ten, #250
San Antonio, TX 78213

FGMS Holdings, LLC
dba Ovation Services, LLC
P.O. Box 4258
Houston, TX 77210

Hibu Inc.
c/o Bennett & Garcia
3821 Juniper
Austin, texas 78738

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

Internal Revenue Service
Attn.: Special Procedures
300 E. 8th St.,STOP5022AUS
Austin, TX 78701

JCPenney Credit Services
C/O SYNCB
P.O. Box 965006
Orlando, FL 32896-5006

Jefferson Bank
Po Box 5190
San Antonio, Tx 78201

Jefferson Bank
c/o Sarah Santos
112 E. Pecan St., #900
San Antonio, TX 78205

JP Morgan Chase Bank
Cardmember Service
Po Box 94014
Palatine, IL 60094

Kabbage
925B Peachtree Street NE
Suite 1688
Atlanta, GA 30309

M2G Real Estate, Ltd
c/o Herbert S. Hill
700 N. St. Mary's #1800
San Antonio, TX 78205

Macy's
Po Box 689195
Des Moines, IA 50368

Nations Woodlands, Ltd.
c/o Culpepper & Mauro
12451 Starcrest Dr.
San Antonio, TX 78216

Ocwen Loan Servicing
PO box 6440
Carol Stream, IL 60197

Ovation Services
8407 Bandera Rd Ste 141
San Antonio, Texas 78250

Perfect Pool
318 W Byrd Blvd
Universal City, Tx 78148

Randolph Brooks FCU
PO Box 2097
San Antonio, Tx 78205

Texas MedClinic
6570 Ingram Rd.
San Antonio, TX 78238

USAA
10750 McDermott Fwy
San Antonio, Tx 78288

YP Advertising
c/o Kyle Neal PC
11550 W IH 10, Suite 287
San Antonio, Texas 78230

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is entered into as of the 15 day of December, 2015 ("Effective Date"), by and Mesquite Country Real Estate, LLC and/or assigns, a Texas limited liability company ("Buyer") and Pete Gutierrez ("Seller").

WITNESSETH:

In consideration of the mutual covenants set forth herein, Seller and Buyer agree as follows:

1. **Conveyance of Property:** On the terms and subject to the conditions set forth in this Agreement, at Closing, as hereinafter defined, Seller shall sell, convey and assign to Buyer, and Buyer shall buy and accept from Seller, subject to the Permitted Encumbrances, as hereinafter defined, all of the Seller's right, title and interest, in and to the real property together with all improvements thereon; all rights, privileges and appurtenances pertaining thereto more particularly described in the legal description attached hereto as Exhibit A and Exhibit A-1 and incorporated herein for all purposes.
2. **Purchase Price:**
 - (a) The purchase price for the property shall be Four Hundred Forty Thousand Dollars (\$440,000.00) ("Purchase Price"), payable at Closing in cash or the equivalent of cash. The Purchase Price shall be paid to Alamo Title Company, 18618 Tuscan Stone, Suite 240, San Antonio, Texas 78258; Attention: Joe Gimblet (the "Title Company") and distributed by the Title Company pursuant to joint escrow instructions. Within three (3) business days from the Date of the Executed Purchase & Sale Agreement, Buyer shall transfer an initial earnest money deposit of \$10,000 to the Title Company. The Earnest Money shall be applied to the Purchase Price if the Property is sold pursuant to this Agreement, or otherwise applied pursuant to the terms of this Agreement.
 - (b) Real estate, personal property or other taxes or assessments shall be pro-rated to the Closing Date based upon a 365 day calendar year.
3. **Contingent Agreement:** This Agreement shall be completely contingent upon Buyer's satisfaction of or Buyer's waiver (at Buyer's sole discretion) of the contingencies set forth as follows (the "Contingencies"):
 - (a) Approval of the appropriate governmental agencies of a site plan (including a building permit for the Buyer's building) for the proposed restaurant to be developed on the Property including approval of curb cuts, drive-thru' and any off-

site traffic management improvements deemed necessary for the operation of Buyer's business on the Property;

(b) Determination that the Property is not located within a flood plain and that the Property has drainage conditions acceptable to Buyer for the proposed development of the Property;

(c) Determination that all utilities necessary for the proposed development are available at the boundary lines of the Property;

(d) Obtaining any and all easements benefiting the Property and/ or cancel any and all easements encumbering the Property, as may be necessary for Buyer's proposed development and use of the Property as a restaurant;

(e) Receipt of a Phase I Environmental Report, prepared by a certified environmental engineer engaged by Seller, indicating that the Property does not contain underground storage tanks and hazardous wastes, substances and materials in such amounts and in such condition that remediation is required by federal, state or local laws, rules or regulations;

(f) Buyer has obtained Financing Approval from its lender for a loan; and

(g) Approval by Buyer's franchisor of the proposed restaurant site (including, without limitation, location and layout and architectural plans) and the terms and conditions of this Agreement.

The Contingencies above shall be deemed to have been satisfied or waived, unless on or before the Closing Date, Buyer gives to Seller notice of Buyer's failure to satisfy the Contingencies and, consequently, termination of this Agreement (the "Termination Notice") and receive a refund of its Earnest Money.

4. Inspection: During the period from Effective Date until the earlier of the Closing Date or cancellation of this Agreement, Seller shall afford all representatives of Buyer free and full access to the Property, for inspection and examination, at reasonable times. This privilege shall include the right to make surveys, site plans, renderings, soil tests, environmental inspections, borings, percolation tests and other tests to obtain any relevant information necessary to determine subsurface, topographic and drainage conditions and the suitability of the Property for use and development by Buyer.



5. Delivery of Documents: On or before ten (10) days after date hereof: (i) Buyer will cause the Title Company, at Buyer's sole cost, to deliver to Buyer a commitment for an Owner's Policy of Title Insurance covering the fee estate in the Property (the "Title Commitment") from the Title Company in the amount of the Purchase Price, setting forth the status of the title of the Property, showing all matters of record affecting the Property, together with true, complete and legible copies of all documents referred to in the Title Commitment; and (ii) Buyer, at Buyer's sole cost, shall deliver a survey of the Property ("Survey"). The Survey shall be prepared by a Registered Professional Land Surveyor acceptable to the Title Company and shall include:
- (a) the identity of the Property by metes and bounds;
 - (b) a showing that the Survey was made and scaled on the ground with corners permanently marked;
 - (c) the dimensions and total area of the Property;
 - (d) the location of all improvements, highways, streets, roads, railroads, waterways of any kind, fences, easements, and rights of way on the Property with all easements and rights-of-way referenced to their recorded information;
 - (e) any discrepancies or conflicts in boundaries, any encroachments, and any portion of the Property lying in special flood hazard area (either A or V zone indicated on the latest FEMA flood insurance rate map); and
 - (f) the surveyor's certificate that the Survey is true and correct and copies of all environmental inspection reports in Seller's possession.
6. Plat: Buyer shall have the property re-platted at buyer's sole expense. Seller shall provide any assistance required by Buyer or buyer's representatives in obtaining such re-plat.
7. Title Matters: Buyer may object to matters disclosed in either the title commitment or survey which constitute a defect or encumbrance upon title to the Property. Seller may, but is not obligated to, cure Buyer's objections within ten (10) days after Seller's receipt of Buyer's objections or such longer period as the parties may agree. The Closing Date and the Inspection Period will be extended as necessary to allow Seller to cure such objections. If Seller fails to cure the objections within ten (10) days or such other time as agreed upon by the parties, Buyer may, at its election, terminate this Agreement by providing written notice of termination to Seller on or before the Closing Date and receive a refund of its Earnest Money, or waive such objections and proceed with the closing. Any title matters not objected to by Buyer or any matters to which Buyer objects but Seller fails to cure and Buyer waives are hereafter referred to as "Permitted Exceptions".



8. Representations and Warranties: Seller hereby represents and warrants to, and covenants with Buyer that:

(a) Seller has the full right, power, and authority to execute, deliver, and perform this Agreement, and this Agreement, when executed and delivered by Seller and Buyer, shall constitute the valid and binding agreement of Seller, and shall be enforceable against Seller in accordance with its terms;

(b) All requisite action on the part of Seller has been taken by Seller in connection with making and entering into this Agreement and the consummation of the purchase and sale provided for herein;

(c) Seller is not aware of any enacted or proposed changes to the present zoning of the properties and there is no fact or condition which would result in the termination or limitation of the existing pedestrian and/or vehicular access to the Property from abutting public roads;

(d) Seller has no knowledge and has received no notice of any release, leak, discharge, spill, disposal, or emission of Hazardous Substances or any pollution, health, safety, fire, environmental, sewage or building code violation;

(e) Seller has obtained all approvals and caused all notifications to be made as required by any environmental law and no action has been commenced or threatened regarding the presence of any Hazardous Substances on or about the Property and Seller has not received any citation, directive, letter or other communication, written or oral, from any person or government authority concerning the presence of Hazardous Substances on or in the Property or any potential liability under any environmental law resulting therefrom;

(f) Seller has no knowledge or information regarding the presence of any Hazardous Substances at adjacent properties which could migrate to, through, over or under the Property;

(g) The Property and the ground under or about the Property is not contaminated with nor does it contain any hazardous substances or any underground storage tanks;

(h) The Property has never been, nor is it currently, used for the generation, transportation, treatment, storage, or disposal of Hazardous Substances or any fraction of them;

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All representations and warranties made in this Agreement shall be deemed to be made on the date hereof and again on the Closing Date. It shall be a condition of Buyer's obligation to close that all warranties and representations made hereunder are true on the Closing Date. If, during the pendency of this Agreement, Buyer, in its sole determination, determines that any warranty or representation given by Seller to Buyer under this Agreement shall be untrue, incorrect or misleading, in whole or in part, Buyer may terminate this Agreement and have the Earnest Money returned to Buyer. The warranties, representations, covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder. Seller hereby agrees to indemnify and hold Buyer harmless from and against any and all claims, demands, liabilities, costs and expenses of every nature and kind (including attorneys' fees) which Buyer may sustain at any time (i) as a result of, arising out of or in any way connected with the operation, ownership, custody or control of the Property prior to the Closing Date; or (ii) by reason of the untruth, breach, misrepresentation or non-fulfillment of any of the covenants, representations, warranties or agreements made by Seller in this Agreement or in any documents or agreements delivered in connection with this Agreement or with the closing of the transaction contemplated hereby.

9. Inspection Period; Buyer's Right to Cancel: Upon payment by Purchaser to Seller of \$100 (the "Option Fee") which shall be credited to the Purchase Price at Closing, for a period ending at 4:00 o'clock p.m., on the 90th day after the Effective Date (the "Inspection Period"), Buyer will have the absolute right to cancel this Agreement for any reason whatsoever, in Buyer's sole and absolute discretion, by giving Seller written notice of cancellation prior to expiration of the Inspection Period, whereupon all earnest money shall be returned to Buyer and this Agreement shall be null and void and of no further force and effect. However, until Buyer cancels, Buyer will proceed in good faith, at Buyer's sole expense, with Buyer's investigatory due diligence with respect to the Property and this Transaction. In the event that Buyer has not satisfied the Contingencies set forth in Section 3 (collectively, the "Approval Contingencies") within said 90 day period, then Buyer, at its sole election, shall have the option to extend the Inspection Period for two (2) additional thirty (30) days subject to Purchaser providing written notice of its intent to exercise this option prior to expiration of the original Inspection Period. Upon notice of its intent to exercise the option, Purchaser must deposit five thousand dollars (\$5,000.00) as "Additional Earnest Money", upon delivery to Seller of notice of such extension at any time prior to the expiration of the original 90 day Inspection Period or the 30 day extension period, as applicable. The Additional Earnest Money shall immediately become non-refundable but applicable to the purchase price. Unless Buyer gives written notice of cancellation to Seller and Escrow Agent prior to the expiration of the Inspection Period, then Buyer will be deemed to have elected not to cancel the Agreement under this provision.



(i) "Hazardous Substances" shall include but is not limited to substances defined as "Hazardous Substances," "Hazardous Materials," or "Toxic Substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et. seq.; the Resources and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous waste, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state in which the Premises are located; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "environmental laws");

(j) Seller has no knowledge or information regarding any pending or threatened litigation, condemnation or assessment concerning the Property and Seller has not received any notice, either orally or in writing, from any municipal, county, state or any other governmental agency or body, of any zoning, fire, health, environmental or building violation, or violation of any laws, ordinances, statutes or regulations relating to pollution or environmental standards, which have not heretofore been corrected;

(k) Seller has not received any notice, either orally or in writing, of any change contemplated in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent landowners, any one of which would prevent, limit or in any manner interfere with the proposed use of the Property;

(l) Except for any currently existing leasehold interest, no other person or entity other than Seller currently owns or has any legal or equitable interest in the Property and no other person or entity other than Buyer has or will have any right to acquire the Property, or any portion thereof;

(m) All taxes payable with respect to the operation, ownership or control of the Property which are allocable to the period ending on the Closing Date, and all prior periods, shall be or have been paid by Seller and/or the owner of the leasehold interest, and Seller and/or the owner of the leasehold interest shall be responsible for the timely filing of all returns or other documents required by any taxing authority claiming jurisdiction with respect to any such taxes; and

(n) Seller is not a "Foreign Person" as that term is defined in the Foreign Investment in Real Property Tax Act.

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10. Exclusive Use: Seller agrees to record a deed restriction and agrees to not sell, lease, or permit the occupancy of any other adjoining parcel, land, premises, facility, shop space, or property ("Property") now or hereinafter directly or indirectly owned, leased, or otherwise controlled or managed (directly or indirectly) by Seller, Seller's family or family members, heirs, successors or assigns; any corporation, company, partnership or other entity under the ownership, management or control of Seller or any of Seller's subsidiary, affiliate, or brother/sister/parent corporations and their heirs, successors or assigns, any other full-service restaurant similar to Dunkin Donuts (including, but not limited to, "Starbucks, Shipley's Donuts") in which ten percent (10%) or more of the full-service restaurant's business transactions are devoted to the sale of coffee or coffee based beverages and/or doughnuts or baked goods or breakfast sandwiches. Landlord agrees to record a declaration of such Exclusive Use with respect to the property.

11. Closing: The closing ("Closing") of the sale of the Property by Seller to Buyer shall occur within 15 days following satisfaction of the Approval Contingencies or at such other date agreed to by Seller and Buyer in writing (the date such Closing occurs is hereinafter referred to as the "Closing Date"). Closing shall occur in the offices of the Title Company, or at another place and or time as mutually agreed upon by Seller and Buyer, commencing at a mutually agreeable time on the Closing Date. At Closing:

(a) Buyer shall deliver to Seller (i) payment of the Purchase Price in cash or the equivalent of cash; (ii) evidence satisfactory to Seller and the Title Company that the person executing documents on behalf of Buyer has full right, power and authority to do so, all fully executed, sworn to, and acknowledged, as appropriate, by Buyer and (iii) such other documents as may be necessary or appropriate to transfer and convey all of the Property to Buyer and to otherwise consummate this Transaction in accordance with the terms of this Agreement;

(b) Seller shall deliver or cause to be delivered to Buyer the following ("Closing Documents"): (i) A Special Warranty Deed in a form satisfactory to Buyer's counsel, conveying to Buyer the Property subject only to the Permitted Exceptions; (ii) IRC Section 1445 Certification; (iii) an Owner's Policy of Title Insurance ("Title Policy") issued by the Title Company, in the amount of the sales price, dated at or after the Closing Date, insuring Buyer against loss under the Title Policy, subject only to (x) the Permitted Exceptions and (y) the standard printed exceptions contained in the promulgated form of title policy except that the standard exception as to discrepancies, conflicts or shortages in area and boundary lines, or any encroachments or protrusions of any overlapping improvements shall be deleted from the Title Policy

Handwritten signature and initials, likely representing the Seller or Buyer, located at the bottom right of the page.

and (iv) evidence satisfactory to Buyer and Title Company that the person or persons executing the Closing Documents on behalf of Seller have full right, power and authority to do so all fully executed, sworn to, and acknowledged, as appropriate, by Seller; and (v) such other documents as may be necessary or appropriate to transfer and convey all of the Property to Buyer and to otherwise consummate this Transaction in accordance with the terms of this Agreement;

(d) The costs of obtaining the environmental reports, any applicable deed stamps, deed taxes, transfer fees, and deed recording fees shall be paid by the Buyer (provided, however, Buyer shall not be obligated to reimburse Seller for its costs heretofore incurred for any such items). Each party shall pay its own attorney fees. All other costs will be paid by the party incurring the cost or apportioned according to customary practice in Bexar County, Texas; and

(e) Seller shall deliver to Buyer possession of the Property.

12. Notices: Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and certified, with return receipt requested, by delivering the same in person to such party, by delivering the same by confirmed facsimile or electronic mail, or by Federal Express or United Parcel Service. Notice given in accordance herewith shall be effective upon the earlier of receipt at the address of the addressee, or on the third (3rd) day following deposit of same in the United States mail as provided for herein, regardless of whether same is actually received. For purposes of notice, the addresses of the parties shall be as follows:

If to Buyer: Mesquite Country Real Estate, LLC
9002 North Maryland
Niles, IL 60714
ATTN: Rishad Rajabali

With a copy to: Berg, Berg & Pandev P.C.
Attn: Vera Pandev
5215 Old Orchard Rd., Ste. 220
Skokie, IL 60077
vp@berglaw.com

A handwritten signature in black ink, appearing to be "JME", is located in the bottom right corner of the page.

Info to Seller: Pete and Jeanette Gutierrez
5714 NW Loop 410
San Antonio, TX 78238
Email: PeteFcre@hotmail.com

With a copy to: Maldonado Galvan Morales
Attn: Jason Galvan
924 McCullough Ave,
San Antonio, TX 78215
Email: Jason@mgnhdllaw.com

Either party may change its address for notice by giving ten (10) days prior written notice thereof to the other party.



13. Assigns: This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and assigns.

14. Termination and Remedies:

(a) If Buyer fails to consummate the purchase of the Property pursuant to this Agreement for any reason other than termination hereof pursuant to a right granted to Buyer in Section 7, then Seller, as its sole and exclusive remedy, shall have the right to terminate this Agreement by notifying Buyer thereof, in which event the Title Company shall deliver to Seller, as liquidated damages, the Earnest Money, whereupon neither Buyer nor Seller shall have any further rights or obligations hereunder. Seller and Buyer hereby acknowledge and agree they have included the provision for payment of liquidated damages because, in the event of a breach by Buyer, the actual damages incurred by Seller can reasonably be expected to approximate the amount of liquidated damages called for, and because the actual amount of such damages would be difficult if not impossible accurately to measure.

(b) If Seller fails to consummate the sale of the Property pursuant to this Agreement for any reason other than (i) termination hereof by Buyer pursuant to Section 7 or (ii) Buyer's failure to perform its obligations hereunder, Buyer shall have the right, as its sole and exclusive remedies, to (A) terminate this Agreement by notifying Seller thereof, in which case the Title Company shall deliver the Earnest Money to Buyer, whereupon neither party hereto shall have any further rights or obligations hereunder or (B) enforce specific performance of Seller's obligations hereunder.

THIS CONTRACT IS SUBJECT OF COURSE TO THE ACCEPTANCE BY THE TRUSTEE OF THE SALE OF THE PROPERTY SUBJECT TO THIS AGREEMENT. SHOULD THE TRUSTEE DENY



SUCH SALE, THIS AGREEMENT SHALL TERMINATE AND ALL EARNEST MONEY PAID, IF ANY, SHALL BE RETURNED TO BUYER. SELLER WOULD NOT BE SUBJECT TO ANY ADDITIONAL DUTIES AND/OR OBLIGATIONS.

(c) If Buyer terminates this Agreement pursuant to a termination right granted Buyer pursuant to Section 10, the Title Company shall deliver the Earnest Money to Buyer, whereupon neither party hereto shall have any further rights or obligations hereunder.

15. Expiration of Offer: This Agreement constitutes an offer by Buyer to purchase the Property on the terms and conditions and for the Purchase Price specified herein. Unless sooner terminated or withdrawn by notice in writing to Seller, this offer shall lapse and terminate at the close of Buyer's business day five (5) days following execution of this Agreement by Buyer, unless, prior to such time, Seller has returned to Buyer one (1) fully executed copy of this Agreement.

16. Brokers and Finders:

(a) Buyer hereby represents and warrants that it has agreed to pay no broker's fee, finder's fee, commission or other similar compensation in connection herewith and it has not acted through any broker or finder, who could claim any such other or additional compensation. Buyer hereby represents and warrants that it has agreed to pay no broker's fee, finder's fee or commission to anyone.

(b) Seller hereby represents and warrants that it has agreed to pay a broker's fee, finder's fee, commission or other similar compensation in connection herewith, and it has acted through a broker or finder who could claim any such other or additional compensation. Seller further agrees to indemnify and hold Buyer harmless from and against all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorney's fees and costs) which Buyer may sustain or incur by reason of any claim for any such fee or compensation, other than claims based upon dealings solely with Buyer. Seller hereby warrants and represents that it has agreed to pay a broker's fee, finder's fee or commission of six percent (6%) to be split equally between Reata Real Estate Services, L.P. (Danny Elliott) and Delta Properties (Chad Clark).

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

18. Time of Essence: Time is of the essence of this Agreement in all respects. Any time period providing for the performance of the parties' obligations herein which would

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otherwise end on a Saturday, Sunday or national holiday shall be extended to the next succeeding business day.

19. Assignment: Buyer hereby reserves the right to assign this Agreement to its nominee. Buyer shall notify Seller of any such assignment at least 5 days prior to the Closing Date by delivery of notice in the manner otherwise required hereunder.

20. Governing Law: This Agreement is being executed and delivered in the state where the property is located and shall be construed and enforced in accordance with the laws of such state. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the state where the property is located.

21. Entire Agreement: This Agreement constitutes the entire contract between the parties hereto, and may not be modified except by an instrument in writing signed by the parties hereto, and supersedes all previous agreements, written or oral, if any, of the parties.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the date first set forth above.

Seller:

Pete Gutierrez

By: 

Its: Pete Gutierrez

Date: 12/1/15

Seller:

Jeanette Gutierrez

By: 

Its: Jeanette M. Gutierrez

Date: 12/1/15

BUYER:

MESQUITE COUNTRY REAL ESTATE, LLC

By: 

Name: Rishad Rajabali

Its: President 

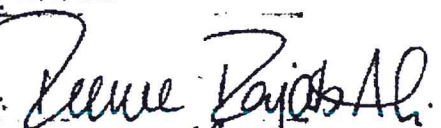
Date: 12/1/15

NAME: Asif Rajabali

IPD: Manager 

DATE: 12/1/2015

NAME: Zeene Rajabali

IPD: Secretary/Partner 

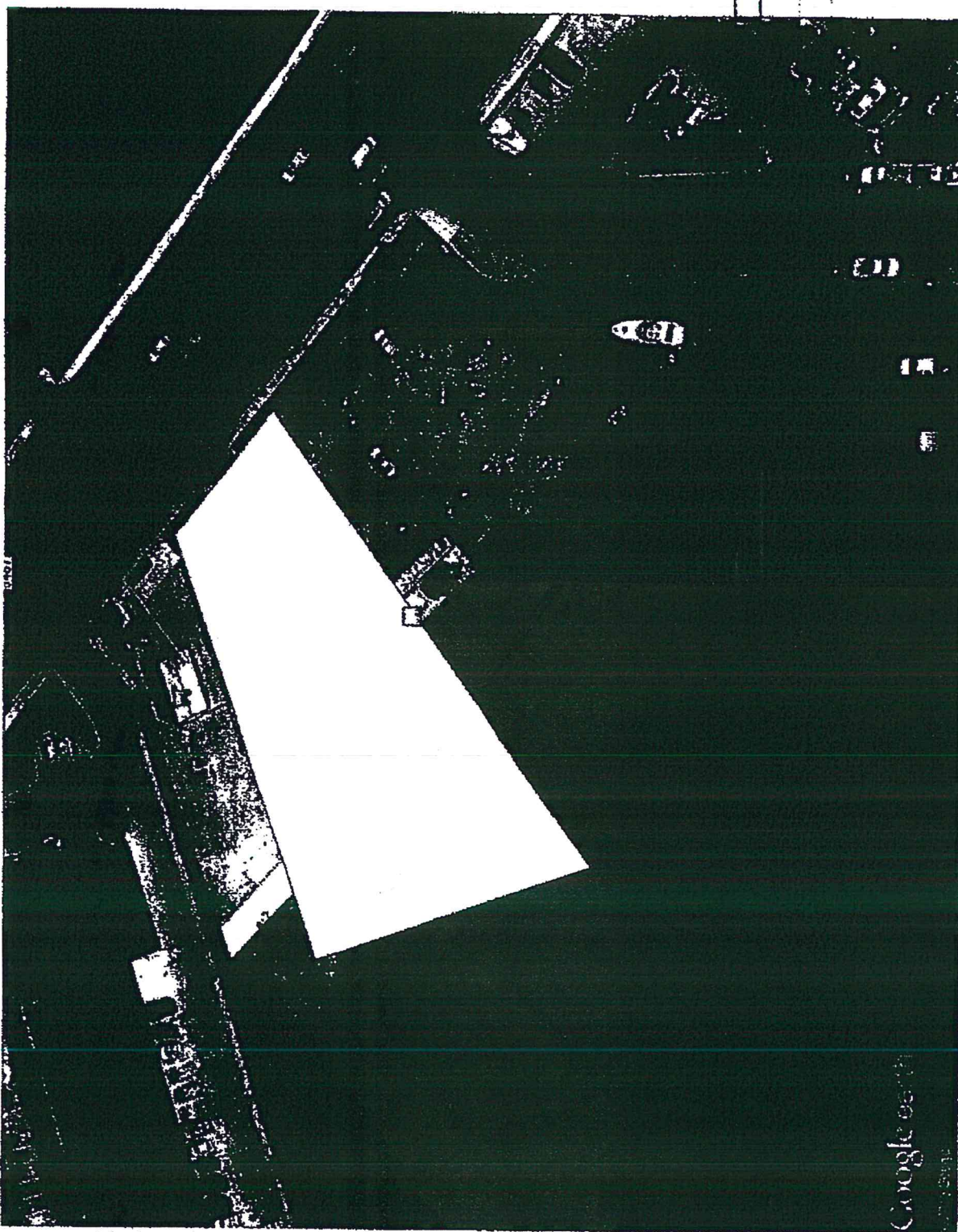
DATE: 12/1/2015

The undersigned hereby executes this Agreement for the sole purpose of (i) acknowledging receipt of the Earnest Money and (ii) to evidence its agreement to hold the Earnest Money in trust for the parties hereto in accordance with the terms of this Agreement.

By: Alamo Title Company
Name: ROBERTA GARCIA HANCOCK
Title: Escrow Officer
Date of Execution: 1-22-16

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND



**FIRST AMENDMENT TO REAL ESTATE CONTRACT BY AND BETWEEN MESQUITE COUNTRY REAL
ESTATE LLC AND/OR ASSIGNS (BUYER) AND PETE GUTIERREZ (SELLER), DATED DECEMBER 1,
2015**

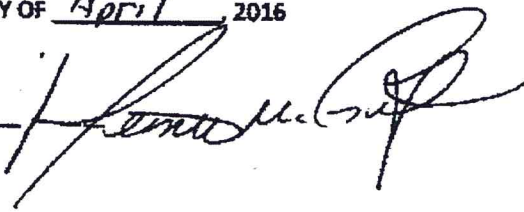
- 1) Paragraph 1 is hereby amended to replace Exhibit A with Exhibit B-1, attached hereto;
- 2) Seller and Buyer agree to create/grant a perpetual easement on, over, upon, and across portions of each property (Parcel 1 and Parcel 2) for purposes of vehicular and pedestrian ingress and egress to and from
- 3) Paragraph 2 is hereby amended to reflect a purchase price of \$480,000.00;
- 4) The Effective Date of the contract is 12/15/2016. Pursuant to the terms of Paragraph 9, Buyer has deposited \$5,000.00 of "Additional Earnest Money", which is non-refundable and exercised two options to extend the Inspection Period for a period of thirty (30) days each. 2nd Additional Earnest Money Deposit shall be tendered upon acceptance of this amendment. The Inspection Period is set to expire on 5/12/2016.
- 5) Seller hereby grants Buyer two additional options to extend the Inspection Period for thirty (30) day periods subject to Buyer providing written notice of its intent to exercise this option prior to expiration of the original Inspection Period and any extension thereof. Upon notice of its intent to exercise the option, Purchaser must deposit five thousand dollars (\$5,000.00) as "Additional Earnest Money", upon delivery to Seller of notice of such extension at any time prior to the expiration of the original 90 day Inspection Period or each of the 30 day extension period, as applicable. The Additional Earnest Money shall immediately become non-refundable but applicable to the purchase price.
- 6) In all other respects all other terms contained in the Real Estate Contract shall remain in full force and effect.

SIGNATURE PAGE TO FOLLOW:

AGREED AND ACCEPTED THIS 26 DAY OF April, 2016



Seller



AGREED AND ACCEPTED THIS 22nd DAY OF April, 2016



Buyer

Exhibit B-1



**SECOND AMENDMENT TO REAL ESTATE CONTRACT BY AND BETWEEN MESQUITE COUNTRY
REAL ESTATE LLC AND/OR ASSIGNS (BUYER) AND PETE GUTIERREZ (SELLER),
DATED DECEMBER 15, 2015**

WHEREAS, Seller and Buyer previously entered into a contract for the sale and purchase of a portion of a certain parcel of land commonly known as 7272 Culebra, San Antonio, Texas.

WHEREAS, said contract was amended on or about April 22, 2016, pursuant to a Rider executed by the Parties;

WHEREAS, Purchaser has deposited earnest money totaling \$30,000.00 to be credited against the purchase price, with Seller's Title Company;

WHEREAS, all of Buyer's contingencies have been satisfied or have otherwise lapsed;

NOW THEREFORE, Seller and Buyer agree to amend the above referenced real estate contract as follows:

- 1) First Amendment to Real Estate Contract by and between Mesquite Country Real Estate LLC and/or assigns (Buyer) and Pete Gutierrez (Seller), dated December 1, 2015 is hereby rescinded;
- 2) Paragraph 1 is hereby amended as follows: Conveyance of Property. At Closing, Seller shall sell, convey and assign to Buyer, and Buyer shall buy and accept from Seller, all of the Seller's right, title and interest, in and to the real property together with all improvements thereon; all rights, privileges and appurtenances pertaining thereto more particularly described in the following legal description:

Lot 29, Block 1, New City Block 18285, 7272 Culebra Subdivision, in the City of San Antonio, Bexar County, Texas, according to map or plat thereof recorded in Volume 9602, Page 35, Deed and Plat Records, Bexar County, Texas.
- 3) Paragraph 2 is hereby amended to reflect a purchase price of \$800,000.00;
- 4) Paragraph 10: The closing ("Closing") of the sale of the Property by Seller to Buyer shall occur on or about 30 days following the date the Seller notifies Buyer that Seller has obtained written approval from the US Bankruptcy Court to sell the Property to Buyer, pursuant to the terms of the Real Estate contract dated December 15, 2015 and the terms contained herein.
- 5) All terms and conditions not otherwise modified herein and contained in the real estate contract dated December 15, 2015 by and between Buyer and Seller shall remain in full force and effect.

SIGNATURE PAGE TO FOLLOW:

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the
date first set forth above.

Sellers:

Pete Gutierrez

Jeannette Gutierrez

BUYER:

MESQUITE COUNTRY REAL ESTATE, LLC

By: Rishad Rajabali

Name: Rishad Rajabali

Its: _____

Date: _____