

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

<b>In Re: Jeanette M. Gutierrez</b>	§	<b>Case No. 15-52100g</b>
	§	
<b>DEBTOR</b>	§	<b>Chapter 11</b>

**AMENDED 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 4215 Skelton Drive, San Antonio, Texas 78219.
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 43, Block 4, New City Block 12631, Fairfield Manor, recorded in the Real Property Records of Bexar County, Texas ("Property").
4. This is a private sale, wherein the Debtor proposes to transfer their interest in the Property to Alicia Gonzales, 4222 Skelton Drive, San Antonio, Texas 78219, pursuant to the terms of an earnest money contract attached hereto as Exhibit "A" an incorporated herein by reference.
5. Pursuant to 11 U.S.C. Section 363(c) and (f), the Debtor desires 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	\$1,362.78
2) Ovation Services	\$6,388.46
3) Jefferson Bank	\$119,750.00
4) 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 \$57,000.00 with \$1,000.00 paid in advance and the remaining balance to be paid in cash at closing.

7. The Debtor estimates that closing costs will total approximately \$3,410.23 and real estate commission will total \$3,420.00. After payment of closing costs, real estate commission, property taxes, tax loans and other costs applicable to the closing of the sale, Debtor anticipates there will be approximately \$44,381 from this sale available for payment towards the mortgage lien of Jefferson Bank. If the mortgage lien of Jefferson Bank has been satisfied from the proceeds of this sale and/or from the sale of other properties, any remaining proceeds from this sale will be applied to the Internal Revenue Service lien. 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

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David T. Cain  
State Bar No. 03598800

### CERTIFICATE OF SERVICE

I hereby certify that on September 22, 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

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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, TX 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

Jon E. Fisher  
Trial Attorney, Tax Division  
717 N. Harwood, Suite 400  
Dallas, Texas 75201

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11-2-2015

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

NOTICE: Not For Use For Condominium Transactions

1. PARTIES: The parties to this contract are Pata Gutierrez (Seller) and Alicia Gonzalez (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: The land, improvements and accessories are collectively referred to as the "Property".
A. LAND: Lot 43 Block 4, NCB 12631 FAIRFIELD MANOR Addition, City of San Antonio, County of Bexar, Texas, known as 4215 Skelton Dr 78219-4026 (address/zip code), or as described on attached exhibit.

B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.

C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories.

D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession:

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing \$ 57,000.00
B. Sum of all financing described in the attached: [ ] Third Party Financing Addendum, [ ] Loan Assumption Addendum, [ ] Seller Financing Addendum. \$
C. Sales Price (Sum of A and B) \$ 57,000.00

4. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable:

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$1,000.00 as earnest money with Nita Hauser, as escrow agent, at 8739 Bandera Rd #104, San Antonio, TX. (address). Buyer shall deposit additional earnest money of \$ with escrow agent within days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

A. TITLE POLICY: Seller shall furnish to Buyer at [ ] Seller's [X] Buyer's expense an owner policy of title insurance (Title Policy) issued by Stewart Title (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 3.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.

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- (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
  - (6) The standard printed exception as to marital rights.
  - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
  - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:  (i) will not be amended or deleted from the title policy; or  (ii) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)
- (1) Within 3 days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date. If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at  Seller's  Buyer's expense no later than 3 days prior to Closing Date.
  - (2) Within \_\_\_\_\_ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
  - (3) Within \_\_\_\_\_ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
- D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: \_\_\_\_\_  
Buyer must object the earlier of (i) the Closing Date or (ii) \_\_\_\_\_ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.
- E. TITLE NOTICES:
- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
  - (2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property  is  is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to

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**change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.**

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

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

- (3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) 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

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a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

**7. PROPERTY CONDITION:**

**A. ACCESS, INSPECTIONS AND UTILITIES:** Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Any hydrostatic testing must be separately authorized by Seller in writing. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

**B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):**  
(Check one box only)

- (1) Buyer has received the Notice.
- (2) Buyer has not received the Notice. Within 3 days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
- (3) The Seller is not required to furnish the notice under the Texas Property Code.

**C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS** is required by Federal law for a residential dwelling constructed prior to 1978.

**D. ACCEPTANCE OF PROPERTY CONDITION:** "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.  
(Check one box only)

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

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

**E. LENDER REQUIRED REPAIRS AND TREATMENTS:** Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

**F. COMPLETION OF REPAIRS AND TREATMENTS:** Unless otherwise agreed in writing: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days if necessary for Seller to complete the repairs and treatments.

**G. ENVIRONMENTAL MATTERS:** Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

**H. RESIDENTIAL SERVICE CONTRACTS:** Buyer may purchase a residential service contract from a residential service company licensed by from TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$\_\_\_\_\_. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.

**8. BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

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**9. CLOSING:**

- A. The closing of the sale will be on or before September 9, 2016, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
  - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
  - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
  - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
  - (5) If the Property is subject to a residential lease, Seller shall transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has acquired the Property and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

**10. POSSESSION:**

- A. Buyer's Possession: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted:  upon closing and funding  according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.

**B. Leases:**

- (1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.
- (2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holder from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

**12. SETTLEMENT AND OTHER EXPENSES:**

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

- (1) Expenses payable by Seller (Seller's Expenses):
- (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
  - (b) Seller shall also pay an amount not to exceed \$ \_\_\_\_\_ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.
- (2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private

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Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender, and other expenses payable by Buyer under this contract.

- B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.
13. **PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.
14. **CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.
15. **DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.
16. **MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.
17. **ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.
18. **ESCROW:**
- A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
- C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.

TAR 1601 Initialed for identification by Buyer AC and Seller PG TREC NO. 20-13

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Alicia Gonzalez



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(Address of Property)

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

To Buyer _____	To Seller <u>4631 Del Mar Trail</u>
at: _____	at: <u>San Antonio, TX 78251</u>
Phone: <u>(210) 630-0276</u>	Phone: <u>210-913-8299</u>
Fax: _____	Fax: _____
E-mail: <u>rogexgzz00@gmail.com</u>	E-mail: <u>petefcre@hotmail.com</u>

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (Check all applicable boxes):

- |   |  |
|---|--|
| <input type="checkbox"/> Third Party Financing Addendum   | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum  |
| <input type="checkbox"/> Seller Financing Addendum  | <input type="checkbox"/> Seller's Temporary Residential Lease  |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Short Sale Addendum   |
| <input type="checkbox"/> Buyer's Temporary Residential Lease  | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway   |
| <input type="checkbox"/> Loan Assumption Addendum   | <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer   | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area  |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals                                | <input type="checkbox"/> Other (list): _____   |
| <input type="checkbox"/> Addendum for "Back-Up" Contract  | _____  |
| <input type="checkbox"/> Addendum for Coastal Area Property   | _____  |

TAR 1601 Initialed for identification by Buyer [Signature] and Seller PG TREC NO. 20-13

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**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ 100.00 (Option Fee) within 3 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 7 days after the effective date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee  will  will not be credited to the Sales Price at closing. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

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

Buyer's Attorney is: \_\_\_\_\_

Seller's Attorney is: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

EXECUTED the 20 day of AUGUST, 2016 (EFFECTIVE DATE).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Digitally signed by  
30

Buyer Alicia Gonzalez

Pete Gutierrez

Seller Pete Gutierrez



08/20/2016  
01:11 AM GMT

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12168, Austin, TX 78711-2168. (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 20-13. This form replaces TREC NO. 20-12.



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 (Address of Property)

**BROKER INFORMATION**  
 (Print name(s) only. Do not sign)

Mission Real Estate Group MRZG00 Delta Properties 503486  
 Other Broker Firm License No. Listing Broker Firm License No.  
 represents  Buyer only as Buyer's agent represents  Seller and Buyer as an intermediary  
 Seller as Listing Broker's subagent  Seller only as Seller's agent

Russell W Hild 598446 Chad Clark 503486  
 Associate's Name License No. Listing Associate's Name License No.

Joe Iley 554437  
 Licensed Supervisor of Associate License No. Licensed Supervisor of Listing Associate License No.

2186 Jackson Keller Rd  
#310 (210) 690-0050 18585 Sigma Ste 106  
 Other Broker's Address Fax Listing Broker's Office Address Fax

San Antonio TX 7821378 San Antonio TX 78258  
 City State Zip City State Zip

russhild@gmail.com (210) 459-8898 cclark@deltaproparti (210) 404-1333  
 Associate's Email Address Phone Listing Associate's Email Address Phone

Selling Associate's Name License No.

Licensed Supervisor of Selling Associate License No.

Selling Associate's Office Address Fax

City State Zip

Selling Associate's Email Address Phone

Listing Broker has agreed to pay Other Broker 3.000% of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

**OPTION FEE RECEIPT**

Receipt of \$ 100 (Option Fee) in the form of bc # 1773 is acknowledged.

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

**CONTRACT AND EARNEST MONEY RECEIPT**

Receipt of  Contract and  \$ 1,000 Earnest Money in the form of bc # 1774 is acknowledged.

Escrow Agent: Stewart Title Date: 8-22-16

By: José Rentería for Nita Hauser nita.hauser@stewart.com  
 Email Address

Stewart Title of San Antonio  
8739-Bandera Road #104 Phone: Ph: 210-684-8703  
 Address San Antonio, TX 78250 Fax: Fx: 210-684-7814

City State Zip

TAR 1601

TREC NO. 20-13