

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

In Re: Jeanette M. Gutierrez

§
§
§
§

Case No. 15-52100g

DEBTOR

Chapter 11

MOTION FOR AUTHORITY TO SELL PROPERTY
FREE AND CLEAR OF LIENS

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

1. On August 8, 2015, the above-named Debtor filed a Voluntary Petition for Relief under Chapter 13 of the United States Bankruptcy Code.

2. The Debtor is an owner of real property located at 215 Longview Drive, San Antonio, Texas 78220.

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 19, Block 4, New City Block 10638, recorded in the Real Property Records of Bexar County, Texas ("the Property").

4. This is a private sale, wherein the Debtor proposes to transfer their interest in the Property to Miguel Castaneda, 4623 Creekmoor Creek, San Antonio, Texas 78220, 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	\$4,467.00
2) Ovation Services	\$2,717.00
3) Jefferson Bank	\$46,105.00
4) Internal Revenue Service	\$1,202,586.00
5) M2G Real Estate, Ltd	\$54,329.67

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

6. The purchase price set forth in the Purchase Agreement is \$58,000.00 with

\$500.00 paid in advance and the remaining balance to be paid in cash at closing.

7. The Debtor estimates that closing costs will total approximately \$1,231.00 and real estate commission will total \$3,480.00. After payment of closing costs and real estate commission, and the liens of Jefferson Bank, Ovation Services, and Bexar County, Texas there will be no funds available for payment towards other lienholders.

8. The estimated or possible tax consequences to the estate resulting from this sale are capital gains in the amount of \$4,530.00

9. The Debtors believe 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, Debtors request 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 Debtors to proceed in accordance with the earnest money contract, and that the Debtors 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 March 14, 2017 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

United States Trustee
P.O. Box 1539
San Antonio, TX 78295-1539

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

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
Po Box 5190
San Antonio, Tx 78201

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

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

Jon E. Fisher, Trial Attorney
Tax Division
717 N. Harwood, #400
Dallas, TX 75201

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
700 North St. Marys Ste 1800
San Antonio, Tx 78205

Macy's
Po Box 689195
Des Moinesia, 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

/s/ David T. Cain

David T. Cain



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

11-2-2015

ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

NOTICE: Not For Use For Condominium Transactions

1. **PARTIES:** The parties to this contract are Pete Gutierrez (Seller) and Miguel Castaneda (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 19 Block 4, NCB 10638 Addition, City of San Antonio, County of Bexar, Texas, known as 215 Longview Dr 78220-1613 (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 \$ 58,000.00
 - 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) \$ 58,000.00
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 \$ 500.00 as earnest money with Alamo Title, as escrow agent, at 9901 W. IH10 ste 101 (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 ☐ Buyer's expense an owner policy of title insurance (Title Policy) issued by Alamo 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.

TAR 1601 Initialed for identification by Buyer MG and Seller PC TREC NO. 20-13

Contract Pg 2 of 11

Contract Concerning

San Antonio, TX 78220-1613

Page 2 of 9

11-2-2015

(Address of Property)

- (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 10 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) 3 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, and 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 instrument 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**

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

Contract Pg 4 of 11

Contract Concerning

San Antonio, TX 78220-1613

Page 4 of 9 11-2-2015

(Address of Property)

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 2 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 \$ 400.00. 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.

TAR 1601 Initialed for identification by Buyer ML and Seller PC

TREC NO. 20-13

Contract Pg 5 of 11

Contract Concerning

San Antonio, TX 78220-1613

Page 5 of 9

11-2-2015

(Address of Property)

9. CLOSING:

- A. The closing of the sale will be on or before March 15, 2017, 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

TAR 1601

Initialed for identification by Buyer AMand Seller PC

TREC NO. 20-13

Contract Concerning

San Antonio, TX 78220-1613

Page 6 of 9 11-2-2015

(Address of Property)

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 MM and Seller PC

TREC NO. 20-13

Contract Concerning 215 Longview Dr Page 7 of 9 11-2-2015
San Antonio, TX 78220-1613
(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 at:

4623 Creekmoor Creek

San Antonio TX 78220-1613

Phone: _____

Fax: _____

E-mail: _____

To Seller at:

Phone: _____

Fax: _____

E-mail: _____

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 checked="" 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 checked="" type="checkbox"/> Other (list): <u>Get Home Inspected, IBS</u> |
| <input type="checkbox"/> Addendum for "Back-Up" Contract | _____ |
| <input type="checkbox"/> Addendum for Coastal Area Property | _____ |

Contract Concerning 215 Longview Dr Page 8 of 9 11-2-2015
San Antonio, TX 78220-1613
(Address of Property)

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ 50.00 (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 8 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: Not at this time

Seller's
Attorney is: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

EXECUTED the _____ day of 27 FEBRUARY 2017, _____ (EFFECTIVE DATE).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)


Buyer Miguel Castaneda

  02/27/2017 06:32 PM GMT
Seller Pete Gutierrez

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 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 20-13. This form replaces TREC NO. 20-12.

Contract Concerning	<u>215 Longview Dr</u> San Antonio, TX 78220-1613 (Address of Property)	Page 9 of 9	11-2-2015
---------------------	--	-------------	-----------

BROKER INFORMATION (Print name(s) only. Do not sign)			
Hacienda Home Real Estate		9001582	
Other Broker Firm	License No.	Listing Broker Firm	License No.
represents	<input checked="" type="checkbox"/> Buyer only as Buyer's agent	represents	<input type="checkbox"/> Seller and Buyer as an intermediary
	<input type="checkbox"/> Seller as Listing Broker's subagent		<input type="checkbox"/> Seller only as Seller's agent
Mary Lou Avila		448325	
Associate's Name	License No.	Listing Associate's Name	License No.
Mary Lou Avila		448325	
Licensed Supervisor of Associate	License No.	Licensed Supervisor of Listing Associate	License No.
9827 Mill Path			
Other Broker's Address		Listing Broker's Office Address	
Fax		Fax	
San Antonio	TX 78254		
City	State	City	State
	Zip		Zip
vueloalto555@gmail.com		(210)663-2597	
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 <u>3.000%</u> 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 \$ _____ (Option Fee) in the form of _____ is acknowledged.	
Seller or Listing Broker	Date

CONTRACT AND EARNEST MONEY RECEIPT	
Receipt of <input type="checkbox"/> Contract and <input type="checkbox"/> \$ _____ Earnest Money in the form of _____ is acknowledged.	
Escrow Agent:	Date:
By: _____	Email Address
	Phone:
Address	Fax:
City	State
	Zip

11/2/2015



Information About Brokerage Services

Texas law requires all real estate licensees to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

TYPES OF REAL ESTATE LICENSE HOLDERS:

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

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

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

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

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

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

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

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

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

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

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

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

<u>Hacienda Home R/E</u>	<u>9201582</u>		
Licensed Broker /Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone
Designated Broker of Firm	License No.	Email	Phone
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
<u>Mary Lou Avila</u>	<u>448325</u>	<u>vueloalto555@gmail.com</u>	<u>663-2597</u>
Sales Agent/Associate's Name	License No.	Email	Phone
<u>Margaret Velazquez</u>			
Buyer/Tenant/Seller/Landlord Initials		Date	

Regulated by the Texas Real Estate Commission

Information available at www.trec.texas.gov
IABS 1-0 Date

Hacienda Home Real Estate, 9827 Mill Path San Antonio, TX 78254
Mary Lou Avila

Phone: (210)663-2597 Fax:
Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

New

U.S. Department of
Housing and Urban
Development
Federal Housing Administration (FHA)

OMB Approval No: 2502-
0538 (exp. 04/30/2018)

For Your Protection: Get a Home Inspection

Why a Buyer Needs a Home Inspection

A home inspection gives the buyer more detailed information about the overall condition of the home prior to purchase. In a home inspection, a qualified inspector takes an in-depth, unbiased look at your potential new home to:

- Evaluate the physical condition: structure, construction, and mechanical systems; Identify items that need to be repaired or replaced; and
- Estimate the remaining useful life of the major systems, equipment, structure, and finishes.

You Must Ask for a Home Inspection

A home inspection will only occur if you arrange for one. FHA does not perform a home inspection. Decide early. You may be able to make your contract contingent on the results of the inspection.

Appraisals are Different from Home Inspections

An appraisal is different from a home inspection and does not replace a home inspection. Appraisals estimate the value of the property for lenders. An appraisal is required to ensure the property is marketable. Home inspections evaluate the condition of the home for buyers.

FHA Does Not Guarantee the Value or Condition of your Potential New Home

If you find problems with your new home after closing, FHA cannot give or lend you money for repairs, and FHA cannot buy the home back from you. Ask a qualified home inspector to inspect your potential new home and give you the information you need to make a wise decision.

Radon Gas Testing

The United States Environmental Protection Agency and the Surgeon General of the United States have recommended that all houses should be tested for radon. For more information on radon testing, call the toll-free National Radon Information Line at 1-800-SOS-Radon or 1-800-767-7236.

Ask your home inspector about additional health and safety tests that may be relevant for your home.

Be an Informed Buyer

It is your responsibility to be an informed buyer. You have the right to carefully examine your potential new home with a qualified home inspector. To find a qualified home inspector ask for references from friends, realtors, local licensing authorities and organizations that qualify and test home inspectors.



Miguel Casanada

HUD-92564 (6/14)

