

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF IOWA

<p>In Re:</p> <p>R&A PROPERTIES, INC.</p> <p>Debtor in Possession</p>	<p>Case No. 17-01000-als</p> <p>Chapter 11</p> <p>DEBTOR'S MOTION FOR ORDER APPROVING SALE OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. §363(f); AUTHORIZATION TO PAY PROFESSIONAL FEES AND OTHER CLOSING EXPENSES AT CLOSING</p>
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COMES NOW R & A Properties, Inc., ("Debtor"), Debtor and Debtor in Possession herein, through the undersigned counsel, and in support of its Motion for Order Approving Sale of Property of the Estate Pursuant to 11 U.S.C. §363(f) , Authorization to Pay Professional Fees and Other Closing Expenses at Closing, states as follows:

1. Debtor commenced this Chapter 11 proceeding by filing of its Voluntary Chapter 11 Petition on May 22, 2017.
2. Debtor continues to serve as debtor-in-possession in this proceeding as of the date of this Motion.
3. Included as property of the estate in this Chapter 11 proceeding is certain undeveloped real estate owned by the Debtor legally described as Lots 2 and 3 Corrells Acres Plots, Plat 2 and locally known as 1711 Euclid Avenue, Des Moines, Iowa, 50313 ("1711"). Following the prior disposition as approved by the Court of another parcel of

real estate that was owned by the Debtor at the commandment of the case, 1711 represents the principal asset of the Debtor's remaining bankruptcy estate and the Debtor intends to use proceeds from the sale of the 1711, as well as other monies received by the Debtor during the pendency of this Chapter 11 proceeding, to fund a Plan of Liquidation, and to make distribution to the creditors of the estate, as such claims are allowed by the Court.

4. On October 9, 2017, the Debtor filed his application to employ NAI Optimum, a real estate brokerage firm affiliated with Iowa Realty ("NAI") as a brokerage firm to assist the Debtor in selling 1711 [Docket No 46], and on November 6, 2017 the Court entered its Order [Docket No. 52] approving the retention of NAI to assist the Debtor in selling 1711.

5. On November 8, 2017 the Debtor received a written offer in the form of a Purchase Agreement: Commercial Property from QTC Investments, LLC ("QTC") to purchase 1711 and all fixtures and improvements thereon for the purchase price of \$200,000.00. The Debtor accepted the Purchase Agreement, subject to the Court's approval, on November 22, 2017. A true and accurate copy of the Purchase Agreement entered into by and between the Debtor and QTC (the "Purchase Agreement") is attached hereto, marked as Exhibit "A", and is incorporated by reference herein.

6. Neither the Debtor, or its principals, or any affiliate of the Debtor or its principals, holds an interest in QTC.

7. The proposed sale of 1711 to QTC under the Purchase Agreement includes all fixtures and improvements upon the property. The Debtor and QTC have agreed that a sale of the improvements will include a sale of a billboard erected on 1711, and will

also necessarily include an assignment of the Debtor's rights under that certain Lease entered into by the Debtor and Clear Channel Outdoor concerning Clear Channel Outdoor's lease of the billboard erected on 1711, pursuant to that Lease identified on Debtor's Amended Schedule G previously filed herein [Docket No. 16]. A true and accurate copy of the Lease between the Debtor and Clear Channel Outdoor concerning the billboard erected on 1711 that is to be assigned by the Debtor to QTC under the Purchase Agreement is attached hereto, marked as Exhibit "B" and is incorporated by reference herein (hereinafter, the "Lease").

8. The Debtor believes the Purchase Agreement, and the proposed purchase of 1711 and assignment of the attendant lease rights to QTC for the amount of \$200,000.00 reflects the current market value of 1711 and the attendant lease rights, and that it is in the best interests of the estate for 1711 and the attendant lease rights to be sold to QTC under the terms and conditions as set forth in the Purchase Agreement.

9. The only claims attaching to 1711 are claims held by Polk County, Iowa for real estate taxes on 1711 for the current tax year, which will be paid by the Debtor from the sale proceeds at closing as a condition of QTC's purchase of 1711. Attached hereto, marked as Exhibit "C", and incorporated by reference is a print out from the website maintained by the Polk County Treasurer setting for the amount owing for the current year real estate taxes on 1711 to be \$2,282.00.

10. Pursuant to 11 U.S.C. §363(b) a trustee may sell property of the estate other than in the ordinary course of business. The right to sell property afforded to a trustee under 11 U.S.C. §363(b) is extended to a Chapter 11 debtor in possession pursuant to 11

U.S.C. 1107, such as the Debtor herein, and the provisions of the Bankruptcy Code incorporated by reference therein.

11. As previously stated, the Debtor retained NAI as a professional person pursuant to 11 U.S.C. §327(a) to assist the Debtor in marketing and selling 1711. The Application indicated that NAI would be paid a commission fee of up to 6% for its services as real estate broker marketing 1711.

12. The Purchase Agreement concerns an offer to purchase 1711 by QTC which was procured by NAI acting in its duties as real estate broker of the Debtor.

13. Pursuant to 11 U.S.C. §330 and given the Debtor's retention of NAI as a professional person to assist with the sale of 1711, the Debtor requests permission to pay a commission of six percent (6%) or \$12,000.00 to NAI as payment in full of its commission relative to the Purchase Agreement.

14. The Debtor is in the process of retaining real estate counsel to assist the Debtor in title work and other legal services related to the closing of the sale transaction reflected by the Purchase Agreement and will file a separate application to retain real estate counsel and seek authority to pay such counsel's standard fee for real estate title and closing services at closing of the proposed transaction. .

WHEREFORE, the Debtor prays that its Motion be granted and that the Court enter an Order directing that:

(i) the Debtor be authorized to sell 1711 to QTC for the amount of \$200,000.00, pursuant to the Purchase Agreement attached hereto with an estimated closing date to occur within thirty (30) days after entry of an Order approving this Motion

("Closing Date");

(ii) as a part of the sale of 1711, the Debtor be authorized to assign rights arising under the Lease with Clear Channel Outdoor to QTC, provided that QTC has no claim by virtue of such assignment to any payments received by the Debtor under the Lease prior to the Closing Date;

(iii) the Debtor, pursuant to 11 U.S.C. §330, be authorized to pay professional fees and expenses at the closing of the sale of 1711 to NAI in the amount of \$12,000.00 reflecting a six percent (6%) commission as stated in the listing agreement entered into by the Debtor and NAI;

(iii) the Debtor be authorized to pay, pursuant to 11 U.S.C. §330, any professional fees owing to any attorney retained by the Debtor to assist it with title and closing work related to the sale of 1711, as the same may be approved by the Court pursuant to a separate Order entered herein;

(iv) the Debtor be authorized to pay the real estate taxes owing to Polk County, Iowa, for the current tax year in the amount of \$2,282.00, and any amount of the 2018-2019 property taxes allocated to the Debtor, provided that such additional property tax allocations for the 2018-2019 tax year do not exceed \$2,800.00;

(iv) the balance of the proceeds received by the Debtor from the sale of 1711, after payment of the professional fees hereby awarded to NAI and the payment of real estate taxes and payment of any other closing costs or other professional fees approved by the Court be held by the Debtor in its Debtor-In-Possession bank account pending further Order of this Court or confirmation of a Chapter 11 plan propounded by

the Debtor; and

(viii) any and all other relief deemed just and equitable in the premises.

Dated: December 6th, 2017.

Respectfully submitted,

Terry L. Gibson

Terry L. Gibson, IS9999619

Wandro & Associates, P.C.

2501 Grand Ave., Suite B

Des Moines, IA 50312

515-281-1475

tgibson@2501grand.com

Counsel to Debtor and Debtor-in-Possession

Certificate of Service

The document was served electronically on parties who receive electronic notice through the CM/ECF as listed on CM/ECF's notice of electronic filing, and by mail, postage prepaid, to the parties listed below:

United States Trustee Office
Southern District of Iowa
210 Walnut Street, Suite 793
Des Moines, Iowa 50309-2108

NAI Optimum
Attn.: N. Kurt Mumm
3737 Woodland Ave., Suite 100
West Des Moines, IA 50266

QTC Investments LLC
1704 E. Euclid Ave.
Des Moines, IA 50313

Robert Colosimo
686 58th Place
West Des Moines, IA 50266

Polk County Treasurer's Office
111 Court Avenue, Rm. #154
Des Moines, IA 50309-0904

Clear Channel Outdoor
4131 109th Street
Urbandale, IA 50322
Attn: Tim Jameson

Dated this 6th day of December, 2017.

Terry L. Gibson
Terry L. Gibson

CLEAR CHANNEL OUTDOOR LEASE AGREEMENT

1. This Lease Agreement ("Lease") is effective April 14, 2011 and entered into between ("Landlord") and CLEAR CHANNEL OUTDOOR, INC., a Delaware Corporation and R & A Properties ("Tenant"). Landlord hereby leases to Tenant the real estate commonly known as Euclid Ave. NS 250ft W/O 16th St in the County of Polk in the State of Iowa ("Property"). The Property is leased for the purpose of erecting, maintaining, operating, improving, supplementing, posting, painting, illuminating, repairing, repositioning and/or removing outdoor advertising structures, including, without limitation, fixture connections, electrical supply and connections, panels, signs, copy and any equipment and accessories as Tenant may place thereon (collectively, the "Structures"). This Lease includes all necessary rights of ingress and egress, Tenant may license the use of the Structures, or any portion thereof, for any lawful purpose.
2. This Lease shall be in effect for an initial term of Ten (10) years, commencing on May 1, 2011. If a government or quasi-government entity acquires the property, then the lease shall be extended to the date which is 30 years from the date of acquisition.
3. Tenant shall pay Landlord rent in the amount of One Hundred Dollars (\$100.00) for the period of time prior to complete construction of the Structures. On the date construction is completed (or if this Lease is a renewal of an existing lease, then upon the commencement date above) rent shall commence at the rate of \$ 5750 per year payable annually in advance.
4. This Lease shall continue in full force and effect for its initial term and thereafter for subsequent like terms, unless not less than ninety (90) days before the end of any such initial or subsequent successive like term Landlord or Tenant gives notice of termination. During any term of this Lease and for a period of ninety (90) days following any termination of this Lease, Landlord grants Tenant the right of first refusal to match any offer acceptable to Landlord for the use or purchase of all or any portion of the Property. A copy of any such third-party offer received by Landlord shall be delivered to Tenant. Tenant shall then have ten (10) business days in which to match such offer by giving notice of acceptance to Landlord. If ownership of the Property changes, Landlord shall promptly notify Tenant of such change. Prior to transferring ownership of the Property, Landlord shall furnish the new owner with a copy of this Lease.
5. Tenant is the owner of the Structures and has the right to remove the Structures at any time or within one hundred twenty (120) days following the termination of this Lease. If for any reason, Tenant's Structures are removed, materially damaged or destroyed, all rent payments shall cease until the Structures are rebuilt. If the Structures are removed for any reason, only the above-ground portions of the Structures need be removed. Tenant has the sole right to make any necessary applications with, and obtain permits from, governmental entities for the construction, use and maintenance of the Structures, and Landlord hereby grants Tenant a limited power of attorney for this purpose. All such permits shall remain the property of Tenant. Tenant shall have no obligation to pursue any zoning matter or to continue to maintain any permit. Any such action shall be at Tenant's option.
6. Landlord and Landlord's tenants, agents, employees or other persons acting on Landlord's behalf, shall not place or maintain any object on the Property or any neighboring property owned or controlled by Landlord which, in Tenant's sole opinion, would obstruct the view of the advertising copy on the Structures. If Landlord fails to remove the obstruction within five (5) days after notice from Tenant, Tenant may in its sole discretion: (a) remove the obstruction at Landlord's expense; (b) cancel this Lease, remove any or all of the Structures, and receive all pre-paid rent for any unexpired term of this Lease; or (c) reduce the rent to One Hundred Dollars (\$100.00) per year while the obstruction continues. Tenant may trim any trees and vegetation currently on the Property and on any neighboring property owned or controlled by the Landlord as often as Tenant in its sole discretion deems appropriate to prevent obstructions. Without limiting the foregoing, Landlord shall not permit the Property or any neighboring property owned or controlled by Landlord to be used for off-premise advertising.
7. If, in Tenant's sole opinion: (a) the view of the Structures' advertising copy becomes entirely or partially obstructed; (b) electrical service is unavailable; (c) the Property cannot safely be used for the erection or maintenance of the Structures for any reason; (d) the Property becomes unsightly; (e) there is a diversion, reduction or change in directional flow of traffic from the street or streets currently adjacent to or leading to or past the Property; (f) the Structures' value for advertising purposes is diminished; (g) Tenant is unable to obtain or maintain any necessary permit for the erection, use and/or maintenance of the Structures; or (h) the Structures' use is prevented or restricted by law, or Tenant is required by any governmental entity to reduce the number of billboards operated by it in the city, county or state in which the Structures are located; then Tenant may immediately at its option either: (i) reduce rent in direct proportion to the loss suffered; or (ii) cancel this Lease and receive all pre-paid rent for any unexpired term of this Lease. In addition, if Tenant is prevented from illuminating its signs by law, or other cause beyond Tenant's control, the rent shall be reduced by one-third for such period of non-illumination.
8. If the Structures or the Property, or any part thereof, is condemned by proper authorities; taken without the exercise of eminent domain, whether permanently or temporarily; or any right-of-way from which the Structures are visible is relocated, Tenant shall have the right to relocate the Structures on Landlord's remaining property or to terminate this Lease upon not less than thirty (30) days' notice and to receive all pre-paid rent for any unexpired term of this Lease. Tenant shall be entitled to all compensation and other remedies provided by law, including, without limitation, just compensation for the taking of the Structures and Tenant's leasehold interest in this Lease, and/or relocation assistance. Landlord shall assert no rights in such interests. If condemnation proceedings are initiated, Landlord shall use its best efforts to include Tenant as a party thereto. No right of termination set forth anywhere in this Lease may be

exercised prior to the sale to any entity with the power of eminent domain or by or for the benefit of any entity with the power of eminent domain.

9. Landlord represents that it is the owner (or owner's authorized agent) of the Property and has the authority to enter into this Lease.

10. If the Property is currently encumbered by a deed of trust or mortgage, ground lease or other similar encumbrance, Landlord shall deliver to Tenant on or before the commencement date hereof a non-disturbance agreement in a form reasonably acceptable to Tenant.

11. If (a) Tenant has not been informed of the current address of Landlord or its authorized agent, or (b) two or more of the monthly payments sent by Tenant are not deposited by Landlord within ninety (90) days after the last such payment is sent by Tenant, then no further rent shall be payable hereunder for the period commencing with the due date of the first such payment not deposited and continuing until Landlord (i) gives Tenant notice of its business address or that of its authorized agent or (ii) deposits all previous payments. In either case, Tenant's rent obligations shall be reinstated retroactively as if neither event described in (a) or (b) of this section had occurred.

12. Tenant shall indemnify and hold Landlord harmless from all injuries to the Property or third persons caused by Tenant, Tenant's employees, agents, licensees and contractors. Landlord shall indemnify and hold Tenant harmless from all injuries to Structures or third persons caused by Landlord, Landlord's employees, agents, licensees and contractors.

13. This Lease is binding upon the heirs, assigns and successors of both Landlord and Tenant. Landlord agrees not to assign this Lease to any competitor of Tenant without Tenant's written permission. Tenant shall have the absolute right to assign or sublet.

14. Any notice to any party under this Lease shall be in writing by certified or registered mail, and shall be effective on the earlier of (a) the date when delivered and receipted for by a person at the address specified within this Lease, or (b) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to such address; provided that in either case notices shall be delivered to such other address as shall have been specified in writing by such party to all parties hereto prior to the notice being delivered.

15. If suit is brought (or arbitration instituted) or an attorney is retained by any party to this Lease because the other party breached this Lease, the prevailing party shall be entitled to reimbursement for reasonable attorneys' fees and all related costs and expenses.

16. Neither Landlord nor Tenant shall be bound by any terms, conditions or oral representations that are not set forth in this Lease. This Lease represents the entire agreement of Tenant and Landlord with respect to the Structures and the Property and supercedes any previous agreement. Landlord hereby grants Tenant all rights necessary to record a memorandum of this Lease without Landlord's signature, including a limited power of attorney for such purpose. Landlord understands that the terms of this Lease are proprietary and confidential and Tenant would be damaged by the unauthorized disclosure of the terms. Therefore, Landlord agrees not to disclose the terms to any third party. Such agreement shall survive the termination of this Lease.

17. _____

CLEAR CHANNEL OUTDOOR

By: [Signature]

Its: Tim Jameson, Division President

By: 5/2/11

Its: Jason Pomrenke, Director of Real Estate

Branch Address:
4131 109th Street
Urbandale, Iowa 50322
Tel No. (515) 282-9661

LANDLORD

By: [Signature]

Its: President

Printed Name of Landlord:

Address: _____

Tel No. _____

SS / Tax ID # _____

Parcel Number: 070.01218.002.001

Report Generated: 12/2/2017 11:39:54 AM

Pay property tax online, not in line at
www.IowaTaxandTags.gov

Owner: R & A PROPERTIES INC
 Address: 1711 EUCLID AVE DES MOINES IA 50313
 Description: LTS 2 & 3 CORELLS ACRES PLAT 2

Unpaid Tax Bill Total	\$2,282.00
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Unpaid Tax Bill Detail

Tax Year	Bill Number	Installment	Due Date	Tax	Interest & Fees	Total
2018	RE1035990	1	9/1/2017	\$1,116.00	\$50.00	\$1,166.00
2018	RE1035990	2	3/31/2018	\$1,116.00	\$0.00	\$1,116.00

Balance Due	\$2,232.00	\$50.00	\$0.00	\$2,282.00
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Unpaid Future Special Assessment Detail

Due Date	Descr	Int Rate	Amount	Fee	Total
Balance Due					

Pay property tax online, not in line at www.IowaTaxandTags.gov

Owner: R & A PROPERTIES INC

Unpaid Tax Bill Total		
Bill Number	Installment	Total
RE1035990	1	\$1,166.00
RE1035990	2	\$1,116.00
Total Unpaid		\$2,282.00
Amount Enclosed: _____		

Change of Address
 Address Line 1: _____
 Address Line 2: _____
 City, State, Zip: _____

Unpaid Unbilled Special Assessment Total	
Descr	Total
Total Unpaid	
Amount Enclosed: _____	

Make checks payable to:
MARY MALONEY, Polk County Treasurer

**IOWA REALTY COMMERCIAL
3501 Westown Parkway, West Des Moines, Iowa 50266
(515) 222-0000**

PURCHASE AGREEMENT: COMMERCIAL PROPERTY

Date of Purchase Agreement: November 8, 2017

TO: Owner of Record (Sellers). QTC INVESTMENTS LLC (Buyers) hereby offer to buy the real property situated in Polk County, Iowa, locally known as: 1711 Euclid Des Moines IA 50313 and legally described as: LTS 2 & 3 CORELLS ACRES PLAT 2 subject to and together with any reasonable easements of record, zoning restrictions, restrictive covenants of record and leases, if any, unless otherwise provided herein, and agree as follows:

1. **PURCHASE PRICE:** The Purchase Price shall be \$200,000.00 and the method of payment shall be as follows:

\$1,000.00 cash earnest money upon acceptance of this Offer.

Upon acceptance of this offer, said earnest money shall be deposited in the Iowa Realty Real Estate Trust Account for distribution to Sellers at closing, unless otherwise provided herein. The balance of the purchase price shall be payable as follows:

CASH. Buyers will pay the balance of the purchase price in cash at the time of closing. This agreement is not contingent upon Buyers' obtaining such funds.

OTHER FINANCING TERMS:

2. ~~**POSSESSION AND CLOSING:** Possession is to be given on or about, December 11, 2017.~~ Or a suitable date per the seller and buyer. Adjustment of interest, rents or any other charges attributable to the Buyers' possession are to be made of like date. Closing shall occur after approval of title and **PRIOR TO POSSESSION**. If for any reason the parties hereto agree to a possession date which is before or after the day of closing, the parties shall make a separate agreement with adjustments as of the date of possession. This transaction shall be considered closed upon filing of documents and receipt of all funds by the Broker.
3. **CONDITION OF PROPERTY:** The property as of the date of this Agreement, including buildings, grounds, and all improvements, will be preserved by the **SELLERS** in its present condition until the possession date, ordinary wear and tear excepted. The **BUYERS** shall be permitted to make an inspection of the property prior to possession or Closing, whichever is sooner, in order to determine there has been no change in the condition of the property. Within fifteen (15) days after the final acceptance date, **BUYERS** may, at their sole expense, have the property inspected by a person or persons of their choice to determine if there are any structural, mechanical, plumbing or electrical or other deficiencies. Within this same period, the **BUYERS** may notify in writing the **SELLERS'** selling agent, as shown herein, of any deficiency. The **SELLERS** shall immediately notify the **BUYERS** in writing of what steps, if any, the **SELLERS** will take to correct any deficiencies before Closing. The **BUYERS** shall then immediately in writing, notify the **SELLERS'** selling agent that (1) such steps are acceptable, in which case this Agreement, as so modified, shall be binding upon all parties; or (2) that such steps are not acceptable, in which case this Agreement shall be null and void, and any earnest money shall be returned to **BUYERS**.



4. **INCLUDED PROPERTY:** Included with the property shall be all fixtures or personal property that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached, such as: attached carpeting, light fixtures (including light bulbs), awnings, storm windows, storm doors, screens, air conditioning equipment, plumbing equipment, electrical wiring and other mechanical fixtures and equipment, if any, unless otherwise specified as follows: owner will leave cubicles, 1 set of office furniture, conference table and chairs.

The following items shall not be included:

5. **RENTAL PROPERTY:** If this property is currently used as rental property, the agreement is not contingent upon Sellers providing Buyers evidence of compliance with local zoning and housing code ordinances, if applicable, unless otherwise provided herein.

6. **NOTICE:** Any notice required under this Purchase Agreement shall be deemed given when it is received in writing either by hand delivery or by certified mail, return receipt requested. Persons designed for receipt of any notice for the purpose of this Agreement shall be as follows:

For the Sellers:
R & A PROPERTIES INC
10626 JUSTIN DR
URBANDALE, IA 50322

For the Buyers:
QTC INVESTMENTS LLC
1704 E EUCLID AVE
DES MOINES, IA 50313

Copies of such notices shall be also sent to the Listing Agent and Selling as designated in this Agreement, or their Brokers.

7. **CONDITIONS:** Buyers' duty to perform under this Agreement is contingent upon and subject to the following:
- a) Buyer shall have thirty days (30) days after the execution of this Purchase Agreement to perform its due diligence under this paragraph, and if any condition regarding the property is unsatisfactory to Buyer, in Buyer's sole discretion, the Buyer may terminate this offer and receive all monies paid hereunder.
 - b) Subject to survey and easement clarification.
 - c) Subject to zoning

Failure of any one or more of the conditions set forth in the subparagraphs above, shall give Buyers the right to terminate this Agreement in Buyers' sole and absolute discretion, without any liability whatsoever to Sellers; and upon written notice thereof, the earnest money shall be returned to Buyers, and upon such return, neither party shall have any further rights or obligations with respect to this Agreement.

8. **TAXES:** The Sellers shall pay all real estate taxes that are liens for prior years and all those that are due and payable in the fiscal year in which possession is given. The Sellers shall pay their pro-rated share, based upon the possession date, of the real estate taxes for



the fiscal year in which possession is given due and payable in the subsequent fiscal year. The Buyers shall be given a credit for such pro-ration at closing based upon the last known actual real estate taxes payable according to public record. However, if such taxes are not based upon the full assessment of the present property improvements or the tax classification as of the date of possession, such pro-ration shall be based on the current millage and the assessed value as shown by the Assessor's records on the date of possession. In the event of such partial assessment, it shall be the duty of the Sellers to so notify the Buyers and Broker.

9. **SPECIAL ASSESSMENTS:** The Sellers shall pay in full all special assessments that are certified as liens on the public record at the time of delivery of deed or execution of formal installment contract. Any preliminary or deficiency assessment which cannot be discharged by payment shall be paid through an escrow account with sufficient funds to pay such liens when payable with any unused funds returned to the Sellers. All charges for solid waste removal, sewage, water, utilities and assessments for maintenance that are attributable to Sellers' possession shall be paid by Sellers. All other special assessments shall be paid by Buyers.

10. **HAZARDOUS WASTES:** At Closing, a Groundwater Hazard Statement shall be filed by the SELLERS regarding the following items:

- (1) There are no known wells situated on this property;
- (2) There is no solid waste disposal site on this property;
- (3) There is no hazardous wastes on this property; and
- (4) There are no underground storage tanks on this property.

~~SELLERS warrant that the Property is not subject to any local, state or federal judicial or administrative action, investigation, or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks, and that the property does not contain levels of gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and that SELLERS have done nothing to contaminate the Property with hazardous wastes or substances.~~

SELLERS agree before the BUYERS date of possession to remove from the property and dispose of all solid wastes, industrial wastes and other wastes, and hazardous substances as defined in Iowa Code Chapter 455B.

The BUYERS may at their expense within fifteen (15) days after acceptance of this Purchase Agreement, have the property inspected for the presence or suspected presence of any substances coming within the definition of hazard wastes or substances, pollutants or contaminants under any state or federal law, rule or regulation, including without limitation asbestos and polychlorinated biphenyls, or the presence of any underground storage tanks.

If any such substances, pollutants, contaminants or underground storage tanks are found on the property, then this Agreement may be terminated in BUYERS' sole discretion, upon written notice of termination and the earnest money shall be returned to the BUYERS and neither party shall have any further rights or obligations with respect to this Agreement.

11. **DUTIES OF PARTIES:**



- (A) The Broker, its agents, employees, and associates make no representations or warranties as to the physical or mechanical condition of the property, its size, value, future value, or income potential.
- (B) SELLERS and BUYERS acknowledge that the SELLERS of real property have a legal duty to disclose Material Defects of which SELLERS have actual knowledge in which a reasonable inspection by the BUYERS would not reveal.
- (C) SELLERS acknowledge that they have disclosed, with respect to the subject property, the existence of hazardous waste or substances, or underground storage tanks and wells to BUYERS and Broker. At Closing, SELLERS will make detailed acknowledgment of the existence or absence of hazardous wastes, underground storage tanks and wells pursuant to the required "Real Estate Transfer Groundwater Hazard Statement".

12. **AGENCY DISCLOSURE***

Iowa Realty Commercial and all licensees employed by or associated with Iowa Realty Commercial represents *BUYER in this transaction.

Pursuant to the Iowa Code Section 543B.59, a real estate brokerage agency entering into a brokerage agreement, through a designated broker, may notify a client in writing of those affiliated licensees within the real estate brokerage agency who will be acting as appointed agents of that client, to the exclusion of all other affiliated licensees within the real estate brokerage agency. It is hereby disclosed and acknowledged that Mick Grossman of Iowa Realty Commercial represents, as the appointed agent, the BUYER in this transaction, and that NAI Optimum Commercial represents, as the appointed agent, the SELLER in this transaction.

		<i>Mick Grossman</i>	11/8/17
Seller	Date	Buyer	Date

Listing and Selling Brokers are agents of the parties hereto as outlined above. Their fiduciary duties of loyalty and faithfulness are owed to the party they represent. However, they must treat the other party with honesty and fairness. They must respond to all questions of the parties accurately and must disclose Material Defects about which they have knowledge. The Brokers, their agents, employees and associates are not required, however, to discover hidden defects in the property or give advice on matters outside the scope of their real estate license.

- 13. **SURVEY:** The *Buyers may, within fifteen (15) days after mutual acceptance of this Purchase Agreement, have the property surveyed at their expense. If the survey, certified by a Registered Land Surveyor, shows any encroachments on said property or if any improvements located on the subject property encroach on lands of others, such encroachments shall be treated as a title defect.
- 14. **INSURANCE:** Sellers shall bear the risk of loss or damage to the property prior to closing or possession, whichever first occurs. Sellers agree to maintain existing insurance and shall forthwith secure endorsements on the policies making loss payable to the parties as their interests may appear. Buyers may purchase additional insurance. In the event of substantial damage or destruction prior to closing, this Agreement shall be null and void in the sole discretion and at the option of Buyers. The property shall be deemed substantially



damaged or destroyed if it cannot be restored to its present condition on or before the closing date. However, Buyers shall have the right to complete the closing and receive insurance proceeds regardless of the extent of damages.

15. **JOINT TENANCY:** If Sellers' title is held in joint tenancy, this contract shall not sever such joint tenancy. If Buyers are husband and wife, their interest hereunder shall be held in joint tenancy unless otherwise specifically indicated.
16. **DEED:** Upon payment of purchase price, Sellers shall convey title by warranty deed, with terms and provisions as per form approved by the Iowa State Bar Association, free and clear of liens and encumbrances, reservations, exceptions or modifications, except as in this instrument otherwise expressly provided. All warranties shall extend to time of acceptance of this offer, with special warranties as to acts of Sellers up to time of delivery of said warranty deed.

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17. **ABSTRACT AND TITLE:** Sellers shall promptly provide an Abstract of Title continued to and including the date of acceptance of this Offer. Such abstract shall be delivered to an attorney for a title opinion for the Buyers, such attorney to be selected by the Buyers or their mortgagees. The Sellers agree to make every effort to promptly perfect the title in accordance with such opinion so that upon conveyance, Warranty Deed can be issued and title shall be deemed marketable in compliance with this Agreement, the land title laws of the State of Iowa and the Iowa Title Standards of the Iowa Bar Association. If closing is delayed due to Sellers' inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten (10) days' written notice to the other party and the Broker. The Sellers shall not be entitled to rescind unless they have made a reasonable effort to produce marketable title. The abstract shall become the property of the Buyers when the purchase price is paid in full. Sellers shall pay costs of additional abstracting and/or title work due to act or omission of Sellers, including transfers of death of Sellers or assigns.

18. **REMEDIES OF THE PARTY:** If the SELLERS are in default according to the terms and conditions of this Agreement, the BUYERS shall have the right to have all payments returned and to proceed by any action at law or in equity, and the SELLERS agree to pay the BUYERS reasonable attorney fees and any costs incurred by the BUYER to enforce the terms and conditions of this Agreement. Additionally, the BUYER shall have the right to seek the appointment of a receiver pursuant to Chapter 680 of the Code of Iowa. Additionally, if the SELLERS are in default under the terms and conditions of this Agreement, the SELLERS shall still be obligated to pay the Broker the real estate commission in full, as more particularly described in this Agreement. For purposes of collecting the Broker's commission, the Broker shall be deemed a third party beneficiary to this Agreement and may maintain an action at law or in equity against the SELLERS for the collection of the commission. In the event the Broker incurs attorney fees in pursuing the collection of this commission, the SELLER shall be obligated to pay the Broker's reasonable attorney fees and costs.

If the BUYERS are in default according to the terms and conditions of this Agreement, the SELLERS may forfeit this Agreement, as provided in Chapter 656 of the Code of Iowa, or the SELLERS may proceed by any action at law or in equity and the BUYERS agree to pay the SELLERS reasonable attorney fees and any costs incurred by the SELLER to enforce the terms and conditions of this Agreement.

19. **ATTORNEY FEES:** In the event either party incurs attorney fees in the process of enforcing the provisions of this Agreement, the prevailing party shall be entitled to receive



the payment of their reasonable attorney fees from the other party.

20. **COURT APPROVAL:** If this property is an asset of any estate, trust or conservatorship, this contract is contingent upon Court approval unless declared unnecessary by Buyers' attorney. If necessary, the appropriate fiduciary shall promptly obtain Court approval and conveyance shall be made by Court Officer's Deed.
21. **FUNDS:** It is agreed that at time of settlement, funds of the purchase price, received from the Buyers and/or Buyers' lender, may be used to apply to the purchase price to pay taxes and other liens to comply with the above requirements, same to be handled under supervision of the Broker and subject to approval of Buyers' attorney on title questions involved and needed to produce marketable title. Sellers hereby appoint the Broker to receive such funds and make such payments and disbursements.
22. ~~**RIGHTS OF INSPECTION, TESTING AND REVIEW OF PREMISES:**~~ Seller shall deliver to Buyer within 10 days of this Purchase Agreement complete and accurate copies of all leases, appraisals, plats, surveys, engineering studies, soil test borings, environmental studies and other documentation pertaining to the physical condition, of the Premises and any other information reasonably requested by Buyer, to the extent that seller has the same in its possession (collectively the "Property Data"). Buyer shall maintain and shall cause its employees and agents to maintain the confidentiality of all Property Data furnished or disclosed to Buyer hereunder, unless such information has been or is subsequently made public by Seller. Buyer agrees that all Property Data is the sole property of Seller, and when in tangible form, shall be returned to Seller upon cancellation of this Agreement.

Upon reasonable notice to Seller, Buyer shall have full and continuing access to the Premises. Buyer shall also have the right to enter upon the Premises at any time after the execution and delivery hereof, including inspecting, surveying, engineering, test boring, performance of environmental tests and such other work as Buyer shall consider appropriate and Buyer shall have the further right to make such inquiries of governmental agencies and utility companies, etc., and to make such feasibility studies and analyses as he considers appropriate (collectively the "Inspections"); provided, however, the Buyer shall, at Buyer's sole cost and expense, restore and/or repair the Premises to the condition the same was in prior to Buyer's Inspection. Buyer may, at any time prior to the expiration of thirty (30) days after execution of this Purchase Agreement (the "Inspection Period"), in his sole discretion, terminate this Agreement by so advising Seller in writing, in which event Earnest Money shall be returned to Buyer and the parties relieved from further liability, at law or in equity. Furthermore, Buyer shall indemnify and hold Seller harmless against any and all liability, damages, claims, suits, causes of action or any proceedings, including reasonable attorney's fees arising out of Buyer or his employees and agents, conducting Inspections on the premises.

24. **SURVIVAL.** All agreements, terms, covenants, obligations, duties, representations and warranties contained in the offer and this Addendum shall survive the closing and shall not be merged into the Warranty Deed given by Sellers to Buyer.
25. **ASSIGNMENT TO QUALIFIED INTERMEDIARY*.** Seller consents to the assignment by Buyer of its interest in the contract to a "Qualified Intermediary" as such term is defined under Section 1031 of the Internal Revenue Code and the regulations thereto. Such assignment shall create no remedies against the Qualified Intermediary beyond the forfeiture of its interest in this contract but shall in no way reduce or limit any remedies or claims which Seller may have against Buyer under this contract. Notwithstanding such assignment, Seller shall convey the property directly to Buyer at closing.



26. **SECTION 1031 EXCHANGE***. The provisions of this Agreement are intended to relate to an exchange of the Property, it being the desire and intent of Seller not to sell the Property but to exchange the Property for property of like kind in a deferred exchange that qualifies as a tax-free exchange under Section 1031 of the Internal Revenue Code of 1986. Buyer agrees to cooperate with Seller in Seller's attempt to qualify the Property as such an exchange, except, however, Buyer shall not incur any costs or liability in doing so; shall not take title to any other property and shall receive title to the Property directly from Seller. Consistent with the foregoing, Buyer consents to Seller's assignment of Seller's rights and obligations under this contract to a "Qualified Intermediary" pursuant to an Agreement to be executed by and between Seller and such Qualified Intermediary and agrees at Closing under this contract to deposit the purchase price of the Property with a "Qualified Escrow Agent" pursuant to an Agreement to be executed by and between Seller and such Qualified Escrow Agent.

27. **GENERAL PROVISIONS:** In the performance of each part of this Agreement, time shall be of the essence. ~~This Contract shall be binding on and inure to the benefit of the heirs, executors, administrators, assigns and successors in interest of the respective Parties.~~ The provisions of this Agreement shall survive the closing. Paragraph headings are for the convenience of reference and shall not limit nor affect the meaning of this Contract. Words and phrases herein, including any acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

28. **ACCEPTANCE:** When accepted, this Purchase Agreement shall become a binding contract for the sale and purchase of the subject property. If this Offer is not accepted on or before Friday November 10, 2017 by 12:00PM it shall become null and void and all payments shall be repaid to the Buyers without liability on the part of the Broker to either party. If accepted by the Sellers on a later date and such acceptance is ratified in writing by Buyers, then this Contract will be valid and binding.

We, the Sellers, hereby accept this Offer this 22 day of Nov., 2017, and agree to pay Iowa Realty Commercial a commission as provided in the Listing Contract. If this property is not listed, the commission shall be six percent (6%) of the final purchase price, payable in full upon closing. Such commission shall be paid out of the purchase price to Iowa Realty Commercial at closing.

Handwritten signature: Maura B...

THIS IS A LEGALLY BINDING CONTRACT. IOWA REALTY COMMERCIAL RECOMMENDS THAT THE PARTIES SEEK LEGAL ADVICE REGARDING THE EFFECT AND SPECIFICS OF THIS DOCUMENT PRIOR TO SIGNING.

Handwritten signatures of sellers
SELLERS' SIGNATURES
X
SELLER NAME, TITLE, ADDRESS
Fed ID#

BUYERS' SIGNATURES
X *Handwritten signature: Maura B...*
BUYER NAME, TITLE, ADDRESS
Fed ID#
1704 East Euclid Ave
Des Moines, IA 50313

**IOWA REALTY COMMERCIAL
EXHIBIT "A"**

**AGENCY DISCLOSURE: BROKER REPRESENTING
BOTH SELLER AND BUYER**

1. A Broker, either acting directly or through one or more of its Agents, can legally be the agent of both the SELLER and the BUYER in a transaction, but only with the knowledge and consent of both the SELLER and the BUYER.
2. Where the same Broker represents both the SELLER and BUYER, the Broker and its Agent(s) has the following affirmative obligations to both the SELLER and the BUYER:
 - a) A fiduciary duty of care, integrity, honesty and loyalty in dealings with both SELLER and BUYER.
 - b) Exercise of reasonable skill and care in performance of the Agent's duties.
 - c) A duty to disclose material defects about the property which they have knowledge. They are not required to discover hidden defects in the property.
 - d) An Agent is obligated not to reveal to either Party any confidential information obtained from the other Party, which does not involve the affirmative duties set forth above. BUYER and SELLER agree to identify in writing to Broker (and its Agents) as "confidential" any communication or information given that is considered by such party to be confidential. For example, in representing both SELLER and BUYER, the Agent may not without the express permission of the respective Party, disclose to the other Party that the SELLER will accept a price less than the listing price or that the BUYER will pay a price greater than the price offered. The Broker (and its Agents) may disclose any information which has not been identified in writing as confidential.
3. If at any time while this transaction is pending the Broker determines that it cannot adequately represent one or both of the Parties pursuant to the affirmative duties set forth above, Broker shall so notify the respective Party that they should obtain independent advice.
4. The above duties of the Agent in a real estate transaction do not relieve a SELLER or BUYER from the responsibility to protect their own interest. BUYER and SELLER should carefully read the Purchase Agreement to assure that it adequately expresses their understanding of the transaction. An agent is a person qualified to advise about real estate. If legal or tax advice is desired consult a competent professional.



**ACKNOWLEDGEMENT OF DISCLOSURE
OF BROKER REPRESENTATION**

Iowa law requires real estate brokers and sales persons to make a written disclosure to all parties to the transaction identifying which party the real estate broker and sales person involved in the transaction represents. This disclosure must be made with respect to all real estate transactions of whatever kind, including, but not limited to, sales, exchanges, contract sales, options, transfers of an interest in a residential cooperative housing corporation, offers to buy, and offers to lease and leases (except leases for one year or less).

In connection with the following proposed transaction:

Type of Transaction: Sale Lease Exchange Option

For the Sellers:
R & A PROPERTIES INC
10626 JUSTIN DR
URBANDALE, IA 50322

For the Buyers:
QTC INVESTMENTS LLC
1704 E EUCLID AVE
DES MOINES, IA 50313

Property Involved:

A) Local Address/Name: 1711 Euclid Rd. Des Moines IA 50313

B) Legal Description: LTS 2 & 3 CORELLS ACRES PLAT 2

it is hereby disclosed and acknowledged as follows:

1) SELLER and BUYER understand and agree that

Iowa Realty Commercial and all licensees employed by or associated with Iowa Realty Commercial represents SELLER BUYER in this transaction.



- 2) Iowa Realty Commercial and its employees or associated licensees are the agents of the parties as stated above. They owe fiduciary duty of loyalty and faithfulness to the party they represent. However, they must treat the other party with honesty and fairness. Each must respond to all questions of the parties accurately and must disclose all material defects about the condition of the real estate and improvements about which they have knowledge. However, they are not required to discover hidden defects in the property or give advice on matters outside the scope of their real estate license.
- 3) BUYER acknowledges that the written disclosure of representation made in this Acknowledgment was provided to BUYER prior to BUYER's making an offer to SELLER (or accepting a specific offer from SELLER) with respect to this transaction.
- 4) SELLER acknowledges that the written disclosure of representation made in this Acknowledgment was provided to SELLER prior to SELLER's accepting an offer from BUYER (or making an offer specific to BUYER) with respect to this transaction.
- 5) This Acknowledgement has been executed by SELLER and BUYER in satisfaction of the requirement for disclosure and acknowledgement of who each real estate broker involved in this proposed transaction represents and shall not constitute agreement or acceptance by either BUYER or SELLER with respect to any terms, covenants, conditions or provisions of this proposed transaction. Any agreement between BUYER and SELLER with respect to the terms, covenants, conditions or provisions of this transaction shall be contained in a separate document or documents duly executed by BUYER and SELLER.

IN WITNESS WHEREOF, SELLER, BUYER, and Iowa Realty Commercial have duly executed this Acknowledgment of Disclosure of Broker Representation in three (3) counterparts, each as of the date listed below.



SELLER

BUYER

X

[Handwritten signature]
SELLER NAME & TITLE

X

Shannon Wood, member
BUYER NAME & TITLE

Date

11/21/17 ⁵⁶ *Shannon Wood*
[Handwritten signature]

Date

11/8/17

X

Listing Broker

X

Salesperson

Date

Date

