

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

IN RE:	§	CASE NO. 16-10150
	§	
RIO MOBILE HOME AND R.V. PARKS, INC.	§	(Chapter 11)
Debtor.	§	

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.

EXPEDITED MOTION TO SELL PROPERTY
FREE AND CLEAR OF LIENS
UNDER BANKRUPTCY CODE 11 U.S.C. § 363(f)

TO THE HONORABLE JUDGE OF SAID COURT:

Debtor Rio Mobile Home and R.V. Parks, Inc. files this Motion to Sell Property Free and Clear of Liens Under Bankruptcy Code 11 U.S.C. § 363(f), and respectfully represents the following:

1. The Debtor filed for relief pursuant to Chapter 11 of the Bankruptcy Code on or about May 10, 2016.
2. This Motion is brought pursuant to Bankruptcy Code section 363(f). Debtor consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

Venue and Jurisdiction

3. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 105 and 363(f). This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2).

4. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

Property That is the Subject Matter of Litigation

5. Debtor is owner of real property located in Brownsville, Texas, more particularly described in Exhibit A, attached, “the Property”.

Proposed Sale

6. The Debtor proposes to sell the Property, that has also been disclosed in Schedule A of Debtor’s bankruptcy schedules, because of the necessity of consummating the sale that will benefit the estate and the property’s secured creditors – the Internal Revenue Service, Rudy De La Garza, the Cameron County ad valorem taxation entities, and the unsecured creditors, if any.

7. The property is not necessary to the administration of the estate for purposes of continuing an ongoing concern, but it is necessary in the sense that a sale of the property will generate cash and other more liquid assets that can be used to treat the claims of the creditors.

Authority

8. Bankruptcy Code section 363 governs the sale, use or lease of property of the estate. Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The standards for approval of a section 363 sale are fairly straightforward. To confirm a sale, a bankruptcy court must find that a “sound business reason” exists to approve the sale. If, in the exercise of the debtor’s business judgment, a valid economic reason exists for a proposed sale, the bankruptcy court will approve the sale upon proper notice and a hearing. *See, e.g., Stephens Indus. Inc. v. Mallory*

Company, Inc., 789 F.2d 386, 390 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2nd Cir. 1983). To establish a sound business reason, the evidence before the court must support the conclusion that a fair or favorable price is being paid and that it is in the best interests of the estate to sell rather than keep the asset. Section 363(f) authorizes the bankruptcy court to approve a sale free and clear of all liens, claims and other interests in certain instances. This section provides:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1)

applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2)

such entity consents;

(3)

such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4)

such interest is in bona fide dispute; or

(5)

such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f).

9. The Debtor proposes to sell the Property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, because:

- a. The lien holders could be compelled, in a confirmed plan with a cram down provision of the lienholder's interest or at a tax sale to accept a money satisfaction of such *interest*.

- b. Such lienholders' interests are liens and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; and
- c. Debtor believes that the lienholders will consent.

Sale Based on Sound Exercise of Business Judgment

10. When a proposed use, sale, or lease of assets is outside the ordinary course of business, Sec. 363(b) requires that the assets be property of the estate. What is included in property of the estate is determined by 11 U.S.C. Sec. 541. As described in paragraph 5, Debtor is the owner of the property.

11. The Debtor must justify the proposed transaction through an articulated business justification for using, selling, or leasing the property outside the ordinary course of business. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.1983); Bankruptcy Rule 9014; *See In re Continental Airlines*, 780 F.2d 1223 (5th Cir. 1986).

12. Section 363 also impliedly requires the Court to find that it is good business judgment for the Debtor to enter into" the transaction." Whether the proffered business justification is sufficient depends on the case. *Matter of St. Petersburg Hotel Assoc., Ltd.*, 37 B.R. 341, 343 (Bankr.M.D.Fla.1983).

13. If the requirements in section 363(b) are satisfied, a proposed transaction is still subject to the requirements in 11 U.S.C. section 363(d) and (e). According to section 363(d), the use, sale or lease of estate property is authorized under section 363(b) only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e) or 362(f).

14. Therefore, this Court must consider: 1) whether the proposed transaction represents a use, sale, or lease of estate property; 2) whether the business justifications offered for the transaction are sufficient to warrant authorization to proceed with sale or lease; and 3) whether the

proposed transaction otherwise violates or is incompatible with the provisions of the Bankruptcy Code.

15. The value of and debt owed on the tracts of land proposed to be sold are as follows:

Property	Value
Block 11, Share 32.2 Recreation Facilities - 1 acre out of Block 11 El Jardin Subdivision Share 32.2 Block 11 W4W 10 134890	\$379,145
Building on 1.0 acre Recreation Building El Jardin Subdivision Share 32.2 Block 11 W4W10 (building on the 1.0 acre tract) 375940	\$7,826
Share 32.2 Blk W4W10 3.0 acres Block 11 (developed) El Jardin Subdivision Share 32.2 Block 11 W4W10, (3.0 acres) 134891	\$30,807
8.0 acres Lot 5 BLK 11 (developed) El Jardin Resubdivision Lot 5, Block 409E (8 acres), Brownsville, Cameron County, Texas 129817	\$100,736
Block 11 (5.0 acres) (undeveloped) El Jardin Subdivision Share 32 W (5.0 acres of E 30 Acres) of Block 11, Brownsville, Cameron County, Texas 134886	\$81,500
Block 11 6.0 acre (undeveloped) El Jardin Subdivision Share 32 East 6.0 acres of Block 11 (E6 W10), Brownsville, Cameron County, Texas 134885	\$97,800
Totals	\$697,814
Farm Implements	7,000
Office Furniture and Equipment	5,000
Other Equipment	4,000
Total Assets/Debts	713,814
Less Secured Debt:	
Rudy De La Garza	136,812.50
Ad Valorem Taxes	34,087.72
State Unemployment Taxes	1,688.12
IRS taxes	2,151.30
Total Secured Debt	174,739.64
Balance to unsecured claims after reducing secured and secured tax claims	\$539,074.36
Internal Revenue Service – Priority unsecured	121,551.23
Marcos Oliva Law Firm – Priority unsecured	3,952.40
Internal Revenue Service – Unsecured	50,367.73

Exhibit B
(Source Cameron County Appraisal District 2016 data)

Secured Debts

16. Rudy De La Garza is a first lien holder for Debtor's properties with tax identification numbers 134886 and 134885 pursuant to a valid and perfected deed of trust with instrument number 2015-00023779 filed on July 2, 2015 and given to secure the payment of that one certain Promissory Note, dated May 28, 2015, in the original principal amount of \$124,375 (the "Property Loan"). The debt owed to Mr. De La Garza is \$136,812.50. The amount owed to the Cameron County *ad valorem* tax entities is \$34,087.72. The amount owed to the Texas Workforce Commission for unemployment taxes is \$1,688.12. Lastly, the amount owed to the Internal Revenue Service is \$2,151.30.

17. The proposed sale price of \$1,100,000.00, includes a down payment of \$250,000.00 which after payment of closing costs, will payoff all of the secured debt of \$174,739.64 and will pay off at least 50% of the Internal Revenue Service unsecured claims, and possibly more, depending on the IRS assessment of the Debtor's recent filings for 2013-2016.

18. The remaining \$850,000 balance shall be paid by buyer to Debtor's estate in monthly \$4,696.73 payments which can payoff the unsecured debt owed to Marco Oliva (\$3,952.40) in one month.

19. Although the Debtor has objected to the claims of Elvia Reyna and J. Julian Rivera as unsubstantiated claims, even assuming that the Court allows those claims in full, the Debtor's estate's revenue stream would pay off those claims in approximately 19.37 months.

20. The business justification offered in support of the sale of the property is sufficient to authorize proceeding with the sale. Assuming that the Court will allow the sale, the proposed sale has significant economic value to the Debtor's estate: 1) the down payment of the sale will

payoff the secured debt on the property; 2) the downpayment of the sale will also pay off the ad valorem taxes due, and 3) the down payment will pay a substantial amount of the taxes owed to the Internal Revenue Service.

21. Debtor proposes to sell the property to Golden Touch Investments, L.L.C., in accordance with a commercial contract. The proposed sale price is in the amount of \$1,100,000.00, which shall be paid via a cash down payment of \$250,000 to be made at closing and a note executed by the buyer payable to the seller for the \$850,000 balance, earning 5.25% annual interest, to be paid in 360 monthly deferred payments of \$4,696.73, following an initial 6 month period of no payments. See Attached Exhibit C; *Commercial Contract – Improved Property and Commercial Contract Financing Addendum*.

22. The \$1,100,000.00 proposed sales price is above the 2016 fair market value of the real property which is **\$697,814**.

23. The proposed buyer not an insider as per section 101(31) of the Bankruptcy Code.

24. The proposed transaction is a result of arms-length negotiations between the buyer and seller.

25. Applying a discount factor of 25% to the aforementioned appraisal value of the property (**\$697,814.00**) that is encumbered by secured liens would net a liquidated value of \$523,360.50.

26. The sale of this property shall prevent any more *ad valorem* taxes on the property from accumulating.

27. All first liens, the ad valorem taxes, and a substantial amount of the tax debt owed to the Internal Revenue Service shall be paid upon closing.

28. The proceeds of the sale, after closing costs and other reasonable expenses related to

the sale as well as payment of the ad valorem taxing authorities, shall pay or satisfy Rudy De La Garza's claim(s) in full, in exchange for the full release of all of Rudy De La Garza's liens on the property, after deducting expenses of the sale, if any, including but not limited to title policy fees, recording fees, payment of delinquent ad valorem taxes, tax certificates, attorney's fees, and other expenses related to the closing of this sale.

29. Any other valid junior lien and encumbrance, which is subordinate to the liens of Rudy De La Garza and the ad valorem taxing entities shall be divested from the Property by the sale.

30. The Debtor requests that it be authorized to complete the private sale pursuant to section 363(f) of Title 11, United States Code, after notice and hearing.

WHEREFORE, PREMISES CONSIDERED, Debtor Rio Mobile Home and R.V. Parks, Inc. prays that after notice and hearing, this Court enter an order authorizing the private sale of the property herein described pursuant to the terms herein above set out; that the Debtor be authorized to execute any and all documents necessary to consummate such sale; that Rudy De La Garza issue its full release of lien(s) upon receiving payment covering all its interest in the property; and that any other liens claimed on the Property shall release from the Property automatically upon the Closing of the sale of the Property with any such liens to attach to any cash proceeds to be received by the Debtor (if any) after payment of the costs of closing and the requisite amounts to the ad valorem taxing entities, Rudy De La Garza and in full satisfaction, of their claims as described hereinabove; or alternatively enter an order scheduling a hearing wherein the procedures for a public sale be set, and for such other and further relief to which the Debtor may be entitled.

Date: August 25, 2017.

Respectfully submitted,

Law Office of Antonio Martinez, Jr., P.C.

/s/ Antonio Martinez, Jr.

Antonio Martinez, Jr.

State Bar No. 24007607

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Attorney for Debtors

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was forwarded to the following persons, as well as those persons required to receive notice of the relief requested and/or who have requested to be served by any applicable Bankruptcy Rule, by first class mail, postage prepaid, and/or electronic transmission on August 25, 2017:

Stephen Douglas Statham
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515 Rusk, Suite 3516
Houston, TX 77002

Stephen.Statham@usdoj.gov

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Rudy de la Garza
315 East First Street
Brownsville, TX 78520

William F. Kimball, Esq.
312 E. Van Buren
Harlingen, Texas 78550

wfkattorney@yahoo.com

As well as the other creditors on the mailing matrix

/s/Antonio Martinez, Jr.
Antonio Martinez, Jr.

EXHIBIT A

TRACT 1:

The East Two (2) acres of Lot Five (5), Block Four Hundred Nine (409), EL JARDIN RESUBDIVISION of parts of Shares 23, 28, 29, 30, 31 and .25, Es-piritu Santo Grant, Cameron County, Texas according to the Map or Plat recorded in Volume 4, Page 48, Map Records, Cameron County, Texas.

TRACT II:

The West Six (6), acres of the East Eight (8) acres, Lot Five (5), Block Four Hundred Nine (409), EL JARDIN RE-SUBDIVISION of parts of Shares 23, 28, 29, 30, 31 and 25, Espiritu Santo Grant, Cameron County, Texas, according to the Map or Plat recorded in Volume 4, Page 48, Map Records, Cameron County, Texas.

TRACT III:

The West Four (4) acres of Block Eleven (11), EL JARDIN SUBDIVISION in Share 32, Espiritu Santo Grant, Cameron County, Texas, according to the Map or Plat recorded in Volume 4, Page 52, Map Records, Cameron County, Texas.

TRACT IV:

The West Five (5) acres of the East Thirty (30) acres Block Eleven. (11); EL JARDIN SUBDIVISION in Share 32, Espiritu Santo Grant, Cameron County, Texas, according to the Map or Plat recorded in Volume 4, Page 52, Map Records, Cameron County, Texas.

TRACT V:

The East Six (6) acres of the West Ten (10) acres Block Eleven (11); EL JARDIN SUBDIVISION in Share 32, Espiritu Santo Grant, Cameron County, Texas, according to the Map or Plat recorded in Volume 4, Page 52, Map Records, Cameron County, Texas.



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - IMPROVED PROPERTY

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1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: DEAN GUTIERREZ, PRESIDENT RIO MOBILE HOME PARK & RV PK INC.,
RIO MOBILE HOME & RV PARKS INC.

Address: 8801 Boca Chica Blvd, Brownsville, TX 78521-8440

Phone: (956) 345-9939 E-mail: gutierrezsra@att.net

Fax: _____ Other: _____

Buyer: GOLDEN TOUCH INVESTMENTS, LLC

Address: 9508 200th St E, Graham, WA 98338-8471

Phone: (956) 592-2097 E-mail: beto@gti.investments.com

Fax: _____ Other: _____

2. **PROPERTY:**

- A. "Property" means that real property situated in CAMERON County, Texas at
8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS

(address) and that is legally described on the attached Exhibit _____ or as follows:

MOBILE HOME PARK 12 ACRES DEVELOPED PLUS 11 ACRES UNDEVELOPED
 EL JARDIN SUBDIVISION SHARE 32 2 BLK 11 E6W10., 6.0000 ACRES
 EL JARDIN SUBDIVISION SHARE 32 W 5.00 ACRES OF E 30 ACRES OF BLK 11
 EL JARDIN SUBDIVISION SHARE 32 2 BLK 11 W4W10., 1.0000 ACRES
 EL JARDIN SUBDIVISION SHARE 32 2 BLK 11 W4W10., 1.0000 ACRES
 RESUBDIVISION LOT 5 BLK 409E, 8.0000 ACRES
 EL JARDIN SUBDIVISION SHARE 32 2 BLK 11 W4 W10, 3.0000 ACRES
 SEE EXHIBIT "A"

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

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

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

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

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

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

Exhibit C

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

A. Cash portion payable by Buyer at closing	\$ 250,000.00
B. Sum of all financing described in Paragraph 4	\$ 850,000.00
C. Sales price (sum of 3A and 3B)	\$ 1,100,000.00

Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD., BROWNSVILLE, TEXAS**4. FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3B as follows:

- ☐ A. Third Party Financing: One or more third party loans in the total amount of \$ _____. This contract:
- ☐ (1) is not contingent upon Buyer obtaining third party financing.
- ☐ (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).
- ☐ B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____.
- ☒ C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ 850,000.00 *DJ 8/23/17*

5. EARNEST MONEY: *NP 8/24/17*

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 10,000.00 *5* as earnest money with SIERRA TITLE (title company) at 2335 Hudson Blvd #100, Brownsville, TX 77801 (address) _____ (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ _____ with the title company to be made part of the earnest money on or before:
- ☐ (i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
- ☐ (ii) _____
- Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY, SURVEY, AND UCC SEARCH:**A. Title Policy:**

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
- (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
- (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
- ☐ (a) will not be amended or deleted from the title policy.
- ☐ (b) will be amended to read "shortages in areas" at the expense of ☐ Buyer ☐ Seller.
- (3) Within N/A days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address. *8/23/17*

Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXASB. Survey: Within N/A days after the effective date:

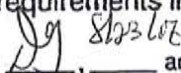
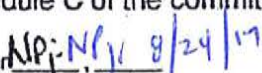
- ☒ (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate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

C. UCC Search:

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

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

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

Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS**7. PROPERTY CONDITION:**

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: AS IS WHERE IS CONDITION; Subject to

Inspection of Property. By 8/24/17
NP 8/24/17

90 Days 8/24/17
NP 8/24/17

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

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

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

C. Inspections, Studies, or Assessments:

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

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

(3) Buyer must:

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

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

D. Property Information:

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

Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS

- ☐ (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- ☐ (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- ☐ (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;
- ☐ (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- ☐ (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- ☐ (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- ☐ (g) copies of all current warranties and guaranties relating to all or part of the Property;
- ☐ (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- ☐ (i) copies of all leasing or commission agreements that currently relate to the tenants of all or part of the Property;
- ☐ (j) a copy of the "as-built" plans and specifications and plat of the Property;
- ☐ (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- ☐ (l) a copy of Seller's income and expense statement for the Property from _____ to _____;
- ☐ (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- ☐ (n) real & personal property tax statements for the Property for the previous 2 calendar years; and
- ☐ (o) Tenant reconciliation statements including, operating expenses, insurance and taxes for the Property from _____ to _____; and
- ☒ (p) A-P items available at the time. DJ 8/24/17
NP 8/24/17

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

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

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

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

8. LEASES:

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

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

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

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

9. BROKERS:

A. The brokers to this sale are:

Principal Broker: _____

Cooperating Broker: _____

Agent: _____

Agent: _____

Address: _____

Address: _____

Phone & Fax: _____

Phone & Fax: _____

E-mail: _____

E-mail: _____

License No.: _____

License No.: _____

Principal Broker: (Check only one box.)

Cooperating Broker represents Buyer.

- ☐ represents Seller only.
- ☐ represents Buyer only.
- ☐ is an intermediary between Seller and Buyer.

B. Fees: (Check only (1) or (2) below.)

(Complete the Agreement Between Brokers on page 14 only if (1) is selected.)

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

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

Principal Broker a total cash fee of:

Cooperating Broker a total cash fee of:

☐ _____ % of the sales price.

☐ _____ % of the sales price.

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

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

Commercial Contract - Improved Property concerning

8801 BOCA CHI CA BLVD., BROWNSVILLE, TEXAS

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

10. CLOSING:

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

(1) ☒ - November 23, 2017 days after the expiration of the feasibility period. 8/23/17 NP 8/24/17
☐ - (specific date).

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

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

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

- (1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
- (2) without any assumed loans in default; and
- (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

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

- (1) tax statements showing no delinquent taxes on the Property;
- (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
- (3) an assignment of all leases to or on the Property;
- (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
 - (a) licenses and permits;
 - (b) maintenance, management, and other contracts; and
 - (c) warranties and guaranties;
- (5) a rent roll current on the day of the closing certified by Seller as true and correct;
- (6) evidence that the person executing this contract is legally capable and authorized to bind Seller;
- (7) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and
- (8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.

- E. At closing, Buyer will:

- (1) pay the sales price in good funds acceptable to the title company;
- (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
- (3) sign and send to each tenant in the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
- (4) sign an assumption of all leases then in effect; and
- (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

Commercial Contract - Improved Property concerning _____

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

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

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

Earnest money shall be refunded to buyer if Court does not approve of the Contract's terms and the sale is not consummated or if any existing liens or judgments cannot be removed.
Addendum - see inventory list

30 day Inspection Period - Aug. 23, 2017 - Sept. 23, 2017. NP 8/24/17
60 day closing Period - Sept. 23, 2017 - NOV. 22, 2017. NP 8/24/17
Inspection Period could extend to closing Date. NP 8/24/17

13. SALES EXPENSES:

A. **Seller's Expenses:** Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) release of Seller's loan liability, if applicable;
- (3) tax statements or certificates;
- (4) preparation of the deed and any bill of sale;
- (5) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

B. **Buyer's Expenses:** Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation fees of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee; and
- (6) other expenses that Buyer will pay under other provisions of this contract.

Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS**14. PRORATIONS:****A. Prorations:**

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

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

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

15. DEFAULT:

- A.** If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(4) which Seller may pursue, or
(Check if applicable)
- ☒ enforce specific performance, or seek such other relief as may be provided by law.
- B.** If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C.** Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CASUALTY LOSS AND CONDEMNATION:

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

Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS

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

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

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

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

18. ESCROW:

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

DS 8/23/17

NP *NP* 8/24/17

Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS

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

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

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

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

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

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

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

22. AGREEMENT OF THE PARTIES:

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

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Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS

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

- ☐ (1) Property Description Exhibit identified in Paragraph 2;
☐ (2) Commercial Contract Condominium Addendum (TAR-1930);
☒ (3) Commercial Contract Financing Addendum (TAR-1931);
☒ (4) Commercial Property Condition Statement (TAR-1408);
☐ (5) Commercial Contract Addendum for Special Provisions (TAR-1940);
☒ (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TAR-1906);
☐ (7) Notice to Purchaser of Real Property in a Water District (MUD);
☐ (8) Addendum for Coastal Area Property (TAR-1915);
☐ (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
☒ (10) Information About Brokerage Services (TAR-2501); and DS 8/23/17 NP 8/24/17
☐ (11) _____

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

E. Buyer ☒ may ☐ may not DS 8/23/17 assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

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

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

25. ADDITIONAL NOTICES:

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

Commercial Contract - Improved Property concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS

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

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

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

DEAN GUTIERREZ, PRESIDENT RIO MOBILE
Seller: HOME PARK & RV PK INC.,

Buyer: GOLDEN TOUCH INVESTMENTS, LLC

RIO MOBILE HOME & RV PARKS INC.

By: DEAN GUTIERREZ

By: BETO PONCE

By (signature): _____
Printed Name: PRESIDENT/CEO RIO MOBILE
Title: PARK & RV PARK INC

By (signature): _____
Printed Name: GOLDEN TOUCH INVESTMENTS, LLC
Title: _____

By: [Signature] 8/23/17
By (signature): [Signature] 8/24/17
Printed Name: _____
Title: _____

By: [Signature] 8/24/17
By (signature): [Signature] 8/24/17
Printed Name: NERBERTO PONCE JR
Title: MEMBER



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT FINANCING ADDENDUM

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ADDENDUM TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED PARTIES CONCERNING
THE PROPERTY AT

8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS

The portion of the Sales Price not payable in cash will be paid as follows: (Check all that apply.)

☐ A. THIRD PARTY FINANCING:

- (1) The contract is contingent upon Buyer obtaining a third party loan(s) secured by the Property in the amount of \$ 511K for not less than _____ years with the initial interest rate not to exceed _____ % per annum and payments calculated on an amortization period of no less than _____ years.
- (2) Buyer will apply for the third party loan(s) described in Paragraph A(1) promptly after the effective date. If Buyer cannot obtain the loan(s), Buyer may give Seller written notice within _____ days after the effective date and the contract will terminate and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer. **If Buyer does not give such notice within the time required, this contract will no longer be subject to the contingency described in this Paragraph A.**
- (3) Each note to be executed under this addendum is to be secured by vendor's and deed of trust liens.

☐ B. ASSUMPTION:

- (1) Buyer will assume the unpaid principal balance of the existing promissory note secured by the Property payable to NPJ dated _____ which balance at closing will be \$ _____.
- (2) Buyer's initial payment will be the first payment due after closing. Buyer's assumption of the existing note includes all obligations imposed by the deed of trust securing the note, recorded in _____ (recording reference) in the real property records of the county where the Property is located.
- (3) If the unpaid principal balance of the assumed loan as of the date of closing varies from the loan balance stated in Paragraph B(1), the cash payable at closing will be adjusted by the net amount of any variance; provided, if the total principal balance of the assumed loan varies in an amount greater than \$ _____ at closing, either party may terminate this contract and the earnest money will be refunded to Buyer unless either party elects to eliminate the excess in the variance by an appropriate adjustment at closing.
- (4) Buyer may terminate the contract and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer if the note holder on assumption requires:
 - (a) Buyer to pay an assumption fee in excess of \$ _____ and Seller declines to pay such excess;
 - (b) an increase in the interest rate to more than _____ %; or
 - (c) any other modification of the loan documents.
- (5) Unless Seller is released of liability on any assumed note, Seller requires a vendor's lien and deed of trust to secure assumption, which will be automatically released on execution and delivery of a release by the note holder.

(TAR-1931) 1-26-10

Initialed for Identification by Seller: DS 8/23/17, _____, and Buyer: NPJ 8/24/17 Page 1 of 4

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- (6) If assumption approval is required by the note holder, Buyer will apply for assumption approval within _____ days after the effective date of the contract and will make every reasonable effort to obtain assumption approval. If Buyer cannot obtain assumption approval, Buyer may give Seller written notice within _____ days after the effective date and the contract will terminate and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer. **If Buyer does not give such notice within the time required and Buyer does not close because Buyer is not able to assume the existing note, Buyer will be in default.**

☒ C. SELLER FINANCING:

- (1) At closing, Buyer will execute and deliver a promissory note (the note) from Buyer to Seller in the amount of \$ 850,000.00 NP 8/24/17, bearing 5.25 % interest per annum. Matured, unpaid amounts will bear interest at the maximum rate of interest allowed by law.
- (2) The note will be payable as follows: 8/23/17
- ☐ (a) In one payment, due _____ NP 8/24/17 after the date of the note, with interest payable: ☐ (i) monthly ☐ (ii) _____
- ☒ (b) In installments of \$ 4,693.13 NP 8/23/17 ☒ including interest ☐ plus interest beginning 6 MONTHS after the date of the note and continuing at ☒ monthly ☐ 360 NP 8/23/17 intervals thereafter for _____ when the entire balance of the note will be due and payable.
- ☐ (c) Interest only in ☐ monthly ☐ _____ installments for the first _____ years and thereafter in installments of \$ _____ ☐ including interest ☐ plus interest beginning _____ after the date of the note and continuing at ☐ monthly ☐ _____ intervals thereafter for _____ when the entire balance of the note will be due and payable.
- (3) The note will be secured by vendor's and deed of trust liens and an assignment of leases payable at the place designated by Seller.
- (4) The note will provide that if Buyer fails to timely pay an installment within 10 days after the installment is due, Buyer will pay a late fee equal to 5% of the installment not paid.
- (5) The note ☒ will ☐ will not provide for liability (personal or corporate) against the maker in the event of default.
- (6) The note may be prepaid in whole or in part at any time without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest will immediately cease on the prepaid principal.
- (7) The lien securing payment of the note will be inferior to any lien securing any superior note described in this addendum. If an owner's policy of title insurance is furnished, Buyer, at Buyer's expense, will furnish Seller with a mortgagee title policy in the amount of the note at closing.
- (8) If all or any part of the Property is sold or conveyed without Seller's prior written consent, Seller, at Seller's option, may declare the outstanding principal balance of the note, plus accrued interest, immediately due and payable. Any of the following is not a sale or conveyance of the Property:
- (a) the creation of a subordinate lien;
 - (b) a sale under a subordinate lien;
 - (c) a deed under threat or order of condemnation;
 - (d) a conveyance solely between the parties; or
 - (e) the passage of title by reason of death of a maker or operation of law.

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- (9) Deposits for Taxes and Insurance: Together with the principal and interest installments, Buyer ☐ will ☒ will not deposit with Seller a pro rata part of the estimated annual ad valorem taxes on the Property and a pro rata part of the estimated annual insurance premiums for the improvements on the Property.
- (a) If Buyer deposits taxes and insurance deposits with Seller, Buyer agrees that the taxes and insurance deposits are only estimates and may be insufficient to pay total taxes and insurance premiums. Buyer agrees to pay any deficiency within 30 days after Seller notifies Buyer of any deficiency. Buyer's failure to pay the deficiency is a default under the deed of trust.
- (b) If any superior lien holder on the Property collects payments for taxes and insurance, any requirement to deposit taxes and insurance deposits with Seller under this addendum is inoperative so long as payments are being made to the superior lien holder.
- (10) Any event that constitutes a default under any superior lien constitutes a default under the deed of trust securing the note.
- (11) The note will include a provision for reasonable attorney's fees for any collection action.
- (12) Unless the parties agree otherwise, the form of the note and loan documents will be as found in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

☐ D. CREDIT APPROVAL ON ASSUMPTION OR SELLER FINANCING:

- (1) To establish Buyer's creditworthiness for assumption approval or seller financing, Buyer will deliver to Seller the following information (Buyer's documentation) within _____ days after the effective date of the contract:
- ☐ (a) verification of employment, including salary;
- ☐ (b) verification of funds on deposit in financial institutions;
- ☐ (c) current financial statement;
- ☐ (d) credit report;
- ☐ (e) tax returns for the following years _____;
- ☐ (f) _____
- (2) If Buyer does not timely deliver Buyer's documentation or Seller determines, in Seller's sole discretion, that Buyer's creditworthiness is not acceptable, Seller may terminate the contract by giving written notice to Buyer not later than _____ days after the date Buyer must deliver Buyer's documentation under Paragraph D(1) and the earnest money, less any independent consideration under Paragraph 7B(1) of the contract, will be refunded to Buyer. If Seller does not timely terminate the contract under this paragraph, Seller will be deemed to have accepted Buyer's credit.

☒ E. SPECIAL PROVISIONS:

6 months Deferred interest to Be Added to Final Balance \$ 28,162.39

DS 8/23/17

NP 8/24/17

8/23/17

8/24/17

Commercial Contract Financing Addendum concerning 8801 BOCA CHICA BLVD, BROWNSVILLE TEXAS

DEAN GUTIERREZ, PRESIDENT - RIO
Seller: MOBILE HOME PARK & RV PK INC,

By: DEAN GUTIERREZ

By (signature): _____

Printed Name: PRESIDENT/CEO RIO MOBILE

Title: PARK & RV PARK INC

By: _____

By (signature): _____

Printed Name: Dean Gutierrez

Title: Pres. / CEO

Buyer: GOLDEN TOUCH INVESTMENTS LLC

By: BETO PONCE

By (signature): _____

Printed Name: GOLDEN TOUCH INVESTMENTS

Title: MEMBER

By: _____

By (signature): _____

Printed Name: _____

Title: _____