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**COUNSEL FOR THE DEBTOR**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:**

**SAMUEL EVANS WYLY,  
  
DEBTOR.**

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**Case No. 14-35043  
  
(Chapter 11)**

**DEBTOR’S MOTION FOR AN ORDER APPROVING THE SALE OF THE  
HOMESTEAD UNDER BANKRUPTCY CODE §§ 105 & 363**

Samuel Evans Wyly, as debtor in possession (the “Debtor”), files this *Motion for an Order Approving the Sale of the Homestead Under Bankruptcy Code §§ 105 & 363* (the “**Motion**”).<sup>1</sup> In support of the Motion, the Debtor respectfully submits:

**JURISDICTION AND PROCEDURAL BACKGROUND**

1. On October 19, 2014 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), commencing this case (the “**Case**”).

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<sup>1</sup> The Debtor intends to request an expedited hearing of this Motion in accordance with the procedures set forth in the Court’s *Order Granting Complex Chapter 11 Bankruptcy Case Treatment* [Docket No. 56].

2. This Court has exclusive subject matter jurisdiction of the Case pursuant to 28 U.S.C. §§ 157 and 1334(a) and exclusive jurisdiction of the properties of the estate and of the Debtor under 28 U.S.C. § 1334(e). The Court additionally has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334(b) because the Motion commences a contested matter that arises under the Bankruptcy Code and arises in and is related to the Case. The Motion is a core matter pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M), (N), and (O); and the relief requested is founded upon Bankruptcy Code §§ 105(a) and 363, together with Rules 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”).

3. Venue is properly laid in this district under 28 U.S.C. §§ 1408 & 1409.

4. Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtor is continuing to manage his affairs and estate as debtor-in-possession.

5. On December 2, 2014, the Court entered an order appointing an official committee of unsecured creditors (the “**Committee**”) in this Case [Docket No. 254].

### **STATEMENT OF FACTS**

6. The Debtor is a resident, citizen, and businessman of Dallas, Texas. A history of his life and a synopsis of the circumstances that caused him to have to file this Case are set forth in the *Expedited Motion for Order on Estate Administration* [Docket No. 5].

7. This Motion seeks approval to sell the residential property located at 3905 Beverly Drive, Dallas, Texas 75205 in the Park Cities neighborhood of Dallas, determined to be the homestead of the Debtor in the *Order* [Docket No. 1393]

entered on July 12, 2016 (the “**Homestead**”).<sup>2</sup> Except for current property taxes not yet due, the Homestead is unencumbered.

8. The Debtor is the sole owner of the Homestead. The Debtor acquired the Homestead in 1966 and lived in the Homestead as his home until May 2017 when he moved to the Edgemere retirement community. In the present factual circumstances in this Case and given the Debtor’s duty to maximize the value of his estate, the Debtor, in consultation with his professional advisors, sought Court approval to market and sell the Homestead.<sup>3</sup>

9. On April 18, 2017, the Court entered the *Order Approving Debtor’s Motion For An Order Approving (A) Employment Of Allie Beth Allman & Associates as Real Estate Broker for Sale of the Homestead, (B) Process For The Sale Of The Homestead, And (C) Related And Necessary Estate Funding And Relief Under Bankruptcy Code §§ 105 & 363* [Docket No. 1807], authorizing the Debtor’s engagement of Allie Beth Allman & Associates (“**ABA**”), a real estate brokerage firm located in Dallas, Texas, to market and sell the Homestead pursuant to the Court-approved sale procedures in order to maximize value for the estate.

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<sup>2</sup> See also Order [Docket No. 1393] (“The Debtor’s claim of exemption under TEX. CONST. art. XVI sections 50-52 and TEX. PROP. CODE section 41.001, .002 & .005 for his homestead identified in his *Amended Schedule C* at page 70 of 94 is approved as such homestead but is limited under Bankr. Code section 522(q) in amount to \$155,675.”).

<sup>3</sup> The Debtor began exploring the sale of the Homestead in 2016.

## RELIEF REQUESTED

10. By this Motion, the Debtor seeks an order authorizing the Debtor to close a private sale<sup>4</sup> of the Homestead at a price of \$9,400,000.00, under the terms of the One to Four Family Residential Contract (Resale) dated October 9, 2017 (the “**Sale Agreement**”), which is attached hereto as **Exhibit A**.<sup>5</sup> The net proceeds of the sale (after deduction of brokerage commissions, closing costs, any other customary costs, and the proration of property taxes) will be deposited into the segregated Debtor-in-Possession account created prior to the sale of the Homestead under the jurisdiction of the Court, subject to the rights and claims of all parties.<sup>6</sup>

11. ABA believes the terms of the Sale Agreement to be fair and reasonable and reflecting the highest and otherwise best value obtainable after extensive marketing over the past 6 months. Further, with the holidays and the traditionally-slow real estate season approaching, ABA believes closing on this sale in a timely manner will secure the maximum value for the Homestead likely to be achieved in the foreseeable future.<sup>7</sup>

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<sup>4</sup> Although technically a private sale, the Homestead has been actively marketed to the public by ABA for a number of months.

<sup>5</sup> The potential purchaser is not an “insider” of the Debtor, as that term is defined in Bankruptcy Code § 101(31).

<sup>6</sup> The amounts on deposit in the segregated Debtor-in-Possession account will not be used to pay monthly expenses as the account was created solely for the deposit of the net proceeds of the sale while the parties continue settlement discussions, unless ordered otherwise by this Court.

<sup>7</sup> See affidavit of Allie Beth Allman, attached hereto as **Exhibit B**, which describes the marketing process for the Homestead, the general state of the current market for comparable homes in the same neighborhood, and other related marketing and pricing information considered for the sale of the Homestead.

12. The Debtor has consulted the Committee, the Securities and Exchange Commission (“SEC”), the Department of Justice on behalf of the Internal Revenue Service (“DOJ”), and the U.S. Trustee (“UST”), previewing this Motion and seeking their support for the relief requested. The Committee, the SEC, the DOJ, and the UST do not oppose the accelerated hearing date and have indicated they do not intend to object to the relief requested herein.

### **BASIS FOR RELIEF REQUESTED**

13. Bankruptcy Code § 363(b)(1) provides that the debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” *See also In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). Pursuant to Bankruptcy Rule 6004, all sales not in the ordinary course of business may be by private sale or by public auction. Bankruptcy Rule 6004(f)(1). Further, Bankruptcy Code § 105(a) provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” “What constitutes proper notice and opportunity for a hearing is largely left to the court’s discretion. . . . it is clear the court may regulate the mechanism of a sale outside the ordinary course.” *In re Texas Rangers Baseball Partners*, 431 B.R. 706, 710 (Bankr. N.D. Tex. 2010 (citing COLLIER)).

14. Whether to proceed by public or private asset sale is committed to the sound discretion of the debtor in possession. *See In re Alisa P’ship*, 15 B.R. 801, 802 (Bankr. D. Del. 1981); *In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998)

(noting that a trustee has “ample discretion to administer the estate, including authority to conduct public or private sales of estate property.”). If a debtor concludes that conducting a private sale, as opposed to a public auction, is in the best interest of the estate, the debtor should be permitted to conduct a private sale. *See, e.g., In re Medical Software Solutions*, 286 B.R. 431, 440 n. 6 (Bankr. D. Utah 2002) (noting that a “bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business). Indeed, “there is no prohibition against a private sale . . . and there is no requirement that a sale be by public auction.” *In re Cypresswood Land Partners, I*, 409 B.R. 396, 436 (Bankr. S.D. Tex. 2009).

15. Bankruptcy Code § 363 does not set forth a standard for determining when a court should authorize the sale or disposition of a debtor’s assets. However, the Fifth Circuit has explained that § 363 “addresses the debtor’s use of property of the estate and incorporates a business judgment standard.” *ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011). In order for a court to approve a request under § 363(b), the “debtor-in-possession or trustee [must] satisfy its fiduciary duty to the debtor, creditors and equity holders,” and to do so, “there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.” *Id. See also In re Cont’l Air Lines, Inc.*, 780 F.2d at 1226; *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) (“A sale of assets under § 363 . . . is subject to court approval and must be supported by an articulated business justification, good business judgment, or

sound business reasons.”); *In re New Millennium Mgmt., LLC*, Case No. 13-35719-H3-7, 2014 WL 2949394, at \*2 (Bankr. S.D. Tex. June 30, 2014) (sales under § 363(b) are governed by the “business judgment standard,” and “[w]hether the proffered business justification is sufficient depends on the case.”).

16. Furthermore, “[t]he business judgment standard in section 363 is flexible and encourages discretion,” requiring the bankruptcy judge to “consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike.” *Id.* (quoting *Cont’l Air Lines*, 780 F.2d at 1226). This fundamental analysis does not change if the proposed sale is private, rather than public. *See In re Ancor Exploration Co.*, 30 B.R. 802, 808 (N.D. Okla. 1983).

17. In this Case, the Debtor has been steadily working to maximize and monetize assets for the benefit of the holders of allowed claims. The private sale of the Homestead is an important component of that process and the Debtor believes the current offer to be fair and reasonable and in the best interest of his estate and his creditors. As evidenced by the affidavit of Allie Beth Allman, the Debtor is confident that the Homestead has been actively marketed and that the Sale Agreement represents the highest and otherwise best available offer that can be consummated in the near term.

18. Ample business justification exists to approve the sale of the Homestead. First, the Homestead has a readily available market that establishes its current value, and the proposed sale price is within a reasonable range of such

market value after extensive marketing by ABA. Second, the sale of the Homestead will maximize the value of the Debtor's estate, both by receiving in cash a reasonable value for an asset the Debtor is not using and which is not necessary to the Debtor's estate, and by eliminating costs associated with retaining the Homestead, such as continuing maintenance, utilities, insurance, taxes, and other associated costs.

19. Accordingly, the Debtor seeks an order approving the private sale of the Homestead pursuant to the Sale Agreement.

**Relief from the Fourteen Day Waiting Period Under  
Bankruptcy Rule 6004(h) is Appropriate**

20. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Bankruptcy Rule 6004(h). The Debtor requests that the order approving the sale of the Homestead be effective immediately by waiving the fourteen (14)-day stay under Bankruptcy Rule 6004(h).

**NOTICE**

21. In accordance with Bankruptcy Rules 6004 and 2002 and L.B.R. 9007-1, notice of this Motion has been provided to the SEC, the DOJ, the UST, the Committee, all creditors, and all parties that have entered a notice of appearance. In accordance with Bankruptcy Rule 2002(c)(1), notice of the Motion includes "the terms and conditions of any private sale and the time fixed for filing objections." Accordingly, the Debtor believes that such notice of this Motion is sufficient.



**PRAYER**

For the reasons stated, the Debtor respectfully requests that the Court enter an Order granting the requested relief and such other and further relief to which the Debtor may be justly entitled.

Dated: October 11, 2017

Respectfully submitted,

**VINSON & ELKINS LLP**

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/s/ James J. Lee

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**COUNSEL FOR THE DEBTOR**

**CERTIFICATE OF CONFERENCE**

I certify that on October 10, 2017, I shared a draft of this Motion with the respective counsel for the UST, the Committee, the DOJ, and the SEC to confer regarding and to request support for the relief requested herein. The Committee, the SEC, the DOJ, and the UST do not oppose the accelerated hearing date and have indicated they do not intend to object to the relief requested herein.

/s/ Rebecca L. Petereit  
One of Counsel

**CERTIFICATE OF SERVICE**

I certify that on October 11, 2017 a copy of the foregoing document was served by (i) the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas, which gives notice to all counsel of record, and (ii) regular U.S. first-class mail, postage pre-paid to those parties listed on the attached consolidated Master Mailing Matrix.

/s/ Rebecca L. Petereit  
One of Counsel



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

11-2-2016

ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

NOTICE: Not For Use For Condominium Transactions

1. PARTIES: The parties to this contract are Sam Wvly (Seller) and Casa B3905, LLC (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.
2. PROPERTY: The land, improvements and accessories are collectively referred to as the "Property".
  - A. LAND: Lot 6 Block 18, County of Highland Park Dallas, Texas, known as 3906 Beverly Dr 75205-2809 (address/zip code), or as described on attached exhibit.
  - B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.
  - C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories.
  - D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: \_\_\_\_\_
3. SALES PRICE:
 

A. Cash portion of Sales Price payable by Buyer at closing .....	\$ 9,400,000
B. Sum of all financing described in the attached: <input type="checkbox"/> Third Party Financing Addendum, <input type="checkbox"/> Loan Assumption Addendum, <input type="checkbox"/> Seller Financing Addendum .....	\$ _____
C. Sales Price (Sum of A and B) .....	\$ 9,400,000
4. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_
5. EARNEST MONEY: ~~Upon~~ <sup>On the first business day after the</sup> execution of this contract by all parties, Buyer shall deposit \$ 500,000 as earnest money with Benchmark Title c/o Scott Sherer as escrow agent, at 2000 McKinney Ave., 4th Floor, Dallas, Texas 75201 (address). Buyer shall deposit additional earnest money of \$ \_\_\_\_\_ with escrow agent within \_\_\_\_\_ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.
6. TITLE POLICY AND SURVEY:
  - A. TITLE POLICY: Seller shall furnish to Buyer at  Seller's  Buyer's expense an owner policy of title insurance (Title Policy) issued by Benchmark Title xxxxxxxxxxxxxx (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
    - (1) Restrictive covenants common to the platted subdivision in which the Property is located.
    - (2) The standard printed exception for standby fees, taxes and assessments.
    - (3) Liens created as part of the financing described in Paragraph 3.
    - (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.

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

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(Address of Property)

- (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
- (6) The standard printed exception as to marital rights.
- (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
- (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:  (I) will not be amended or deleted from the title policy; or  (II) will be amended to read, "shortages in area" at the expense of  Buyer  Seller.

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

- (1) Within \_\_\_ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date. If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at  Seller's  Buyer's expense no later than 3 days prior to Closing Date.
- (2) Within 17 days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within \_\_\_ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title; disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity:

Buyer must object the earlier of (i) the Closing Date or (ii) 5 days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- (2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property  is  is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to

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(Address of Property)

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

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

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

- (3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code; The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area, if your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (8) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.
- (9) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.
- (10) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as

TAR 1601

Initiated for Identification by Buyer \_\_\_\_\_ and Seller \_\_\_\_\_  
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a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

7. PROPERTY CONDITION:

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

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

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

(3) The Seller is not required to furnish the notice under the Texas Property Code.

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

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

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

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

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

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

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

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

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

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Produced with zipForm® by zipLoqix 18070 Fifteen Mile Road, Farmington, Michigan 48302 www.zipLoqix.com 3906 Beverly Dr



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9. CLOSING: November 19, 2017

- A. The closing of the sale will be on or before November 19, 2017, or within 7 days after objections made under Paragraph 8D have been waived, or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
  - (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 8 and furnish tax statements or certificates showing no delinquent taxes on the Property.
  - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
  - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
  - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
  - (5) If the Property is subject to a residential lease, Seller shall transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has acquired the Property and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. POSSESSION:

- A. Buyer's Possession: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted;  upon closing and funding  according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.
- B. Leases:
  - (1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.
  - (2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.

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

The transfer of the Property under this agreement shall be approved prior to the closing by the US Bankruptcy Court with jurisdiction over the Property, approving the transfer to Buyer free and clear of all liens, claims and encumbrances.

12. SETTLEMENT AND OTHER EXPENSES:

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

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

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

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- D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.
- 19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.
- 20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.
- 21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

To Buyer at:  
 Casa B3905, LLC  
 c/o Lidji, Dorey & Hooper  
 Attn: Brian M. Lidji  
 500 N. Akard  
 Suite 3800  
 Dallas, Texas 75201  
 Office- 214-774-1200  
 Cell- 214-566-2118  
 Fax 214-774-1212  
 BLidji@LDHlaw.com

To Seller at:  
 c/o Allie Beth Allman  
 allebeth@alliebeth.com  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

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

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

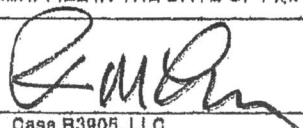
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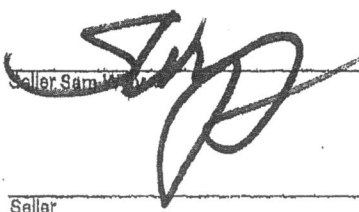
23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ 100 (Option Fee) within 3 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 17 days after the effective date of this contract (Option Period). Notice under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee  will  will not be credited to the Sales Price at closing. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

24. CONSULT AN ATTORNEY BEFORE SIGNING; TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.  
Buyer Attorney: Brian M. Lidji  
Seller Attorney: Lidji Dorey & Hooper

>>>> 25. The offer by Buyer contained in this agreement terminates and is void if not accepted by countersignature of Seller and returned to Buyer prior to ~~6pm Wednesday September 13, 2017~~ noon on Saturday October 7, 2017. <<<<

EXECUTED the 9th day of October, 2017 (EFFECTIVE DATE).  
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

  
Buyer Casa B3905, LLC  
By: Brian M. Lidji  
Manager

  
Seller



\* Seller is the debtor in a pending bankruptcy case, in re: Samuel E. Wily, Case No. 14-35043, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division (the "Bankruptcy Court"). Seller's acceptance of this contract is expressly conditioned upon approval of the Bankruptcy Court, which approval he will promptly seek. The contract will not be binding upon Seller unless and until Bankruptcy Court approval is given, as evidence by a written order of the Bankruptcy Court.

This form of title contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transaction. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 938-0000 (<http://www.trec.texas.gov>) TREC No. 20-13. This form replaces TREC NO. 20-12.

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

Other Broker Firm License No. Allie Beth Allman & Associates 0615965  
 Listing Broker Firm License No.  
 represents  Buyer only as Buyer's agent represents  Seller and Buyer as an Intermediary  
 Seller as Listing Broker's subagent  Seller only as Seller's agent

Associate's Name License No. Susan Shannon 0645381  
 Listing Associate's Name License No.

Licensed Supervisor of Associate License No. Licensed Supervisor of Listing Associate License No.

Other Broker's Address Fax 5015 Tracy Street (214)521-7350  
 Listing Broker's Office Address Fax  
 City State Zip Dallas TX 75205  
 City State Zip  
 Associate's Email Address Phone susan.shannon@alliebeth.com  
 Listing Associate's Email Address Phone  
Allie Beth Allman 0229822  
 Selling Associate's Name License No.  
 Licensed Supervisor of Selling Associate License No.  
5015 Tracy Street (214)521-7350  
 Selling Associate's Office Address Fax  
Dallas TX 75205  
 City State Zip  
allebeth@allebeth.com (214)521-7355  
 Selling Associate's Email Address Phone

Listing Broker has agreed to pay Other Broker 0% of the total sales price when the Listing Broker's fee is received, Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

**OPTION FEE RECEIPT**

Receipt of \$ \$100 (Option Fee) in the form of Lidji, Dorey Hooper check is acknowledged.  
 Date: October 2017  
 Seller of Listing Broker \_\_\_\_\_

**CONTRACT AND EARNEST MONEY RECEIPT**

Receipt of  Contract and  \$ 500,000 Earnest Money in the form of \_\_\_\_\_  
 is acknowledged. Escrow Agent: Benchmark Title Date: October 2017  
 By: Scott Sherer Email Address: 214 478 5800  
Dallas Texas Phone: \_\_\_\_\_  
 State Zip Fax: \_\_\_\_\_