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CAUSE NO. DC-2023-CV-0668

GABEVITELA ENTERPRISE LLC

*Plaintiff,*

v.

SALVATORE MAZZAMUTO and  
GIROLAMO MAZZAMUTO,

*Defendants.*

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IN THE 237TH DISTRICT COURT

OF

LUBBOCK COUNTY, TEXAS

**PLAINTIFF’S FIRST AMENDED PETITION AND APPLICATION FOR  
TEMPORARY AND PERMANENT INJUNCTIONS**

COMES NOW, Plaintiff GabeVitela Enterprise LLC and files this First Amended Petition and Application for Temporary and Permanent Injunctions against Defendants Salvatore Mazzamuto and Girolamo Mazzamuto, and respectfully shows the Court:

**I. PARTIES**

1. Plaintiff GabeVitela Enterprise LLC (Vitela) is a Texas Limited Liability Company.

2. Defendant Salvatore Mazzamuto (Sal) has previously entered an appearance in this case.

3. Defendant Girolamo Mazzamuto (Jerry) is an individual citizen of the State of Texas. He may be served with process at 5719 91st Street, Lubbock, Texas 79424.

**II. JURISDICTION AND VENUE**

4. This Court has jurisdiction over this civil action because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

5. Venue in this action is proper in this Court pursuant to Texas Civil Practice & Remedies Code Section 15.002(a)(1) because all or a substantial part of the events giving rise to the claims herein occurred in Lubbock County, Texas.

**III. AMOUNT IN CONTROVERSY**

6. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff seeks monetary relief of \$250,000.00 or less, excluding interest, statutory or punitive damages, and attorney's fees and costs and non-monetary relief.

**IV. CONDITIONS PRECEDENT**

7. All conditions precedent have been performed or have occurred.

**V. FACTUAL BACKGROUND**

8. Vitela and Sal entered into an Intellectual Property Rights Purchase and Transfer Agreement on August 24, 2020 (the "IP Agreement") related to the *One Guy From Italy* business, goodwill, and brand, wherein Sal sold to Vitela the intellectual property related to this restaurant business. *See* Exhibit A.

9. The IP Agreement specifically prohibited Sal from opening a food business of any kind in Lubbock County, Texas, without the consent of Vitela.

10. Sal admitted that he opened a food business in Lubbock County. Sal specifically stated in his deposition:

Q: All right. Before you bought this location [8008 Abbeville – the Restaurant Property], did you talk to Jerry and say "Hey, Jerry, I am going to buy this location. Do you want to put a restaurant there?"

A: No. But I email if he wants to open a restaurant because he wanted to open a restaurant with Gabe. He wanted him as a partner too. He looked for a restaurant. So – and I do – I am investing. That is why I did it.

Q: Okay. You invested?

A: Invested. That is it.

See Ex. B, Deposition of Salvatore Mazzamuto taken on March 9, 2023 at page 53 line 16 through page 54 line 1.

11. On May 19, 2022, Totomazza Inc. purchased the real property located at 8008 Abbeville in Lubbock, Lubbock County, Texas (Abbeville location). The Abbeville location was previously operated as a restaurant. The purchase included restaurant equipment, including “[r]efrigeration, freezers, sandwich tables, prep tables, tables, chairs, sinks, patio tables and chairs, and shelves” [sic]. See Ex. C, Commercial Contract – Improved Property, Non-Realty Items Addendum, Doc Prod 1-10-23 - #0020. Further, Sal testified in his deposition that the building was a restaurant building and the purchase included restaurant equipment:

Q: So after you signed your trade name agreement with Mr. Vitela and he paid you a hundred thousand dollars, were you out of the restaurant business in Lubbock?

A: I have been a long time out of business in restaurant in Lubbock.

Q: In less than two years after you sold the trademark to Mr. Vitela you bought a restaurant building in Lubbock; right?

A: Yes, sir.

Q: The restaurant building on 8008 Abbeville; correct?

A: It was an investment.

Q: And it happened to be a restaurant building; right?

A: Yeah.

Q: With all the –

A: Equipment.

Q: -- that you would need for a restaurant; right?

A: Yeah.

*See Ex. B at 51:10-20.*

12. Sal also testified in his deposition that he spent \$20,000 to \$30,000 to purchase additional restaurant equipment to assist in opening the Papa V Pizza restaurant. Specifically, Sal testified:

Q: Okay. So I want to just focus on how much you paid for restaurant equipment –

A: Uh-huh.

Q: -- to get Papa V Pizza open. About how much; do you know?

A: I don't remember. Maybe 20,000, 25.

Q: Okay.

A: 30, less. I don't know.

Q: Okay. Somewhere in that range probably?

A: Yeah. I don't know exactly. Yeah.

*Id. at 59:14-23.*

13. Sal testified that he also paid for other costs related to remodeling the property for the restaurant. Specifically, Sal has stated:

Q: You did pay for some of these receipts –

A: Yeah. Yeah.

Q: -- for the remodeling costs?

A: Yeah.

*Id. at 63:5-8.*

14. In October 2022, Papa V Pizza opened at the Abbeville location, operated by Sal's brother, Girolamo (Jerry) Mazzamuto.

15. Without Sal's financial aid and assistance, Papa V Pizza could not have opened. In fact, Sal purchased the real estate, which was previously a restaurant location. Sal specifically

sought restaurant property. Sal also, at his expense, made expensive improvements and bought valuable fixtures, which were to be used for the restaurant business of Papa V Pizza.

16. Witnesses have stated that the products sold by Papa V Pizza at the Abbeville location are the same as those sold by *One Guy From Italy*, which business, brand, recipes, methods, and formulas were purchased by Vitela.

17. Sal represented himself as retired upon the sale of the *One Guy from Italy* located on 50<sup>th</sup> Street in 2017, which is supported by Sal's testimony.

Q: How did Mr. Ghandour introduce you to Mr. Vitela?

A: Mr. Ghandour, I told him I want to sell the place because I want to retire. And he just bring him as a buyer.

*Id.* at 41:8-12.

18. Sal maintained that claim, and stated that he did not intend to open a food business in Lubbock County, Texas, during the negotiation of the terms of the IP Agreement in 2020.

19. The terms “open” and “food business” are not defined in the IP Agreement. Black's Law Dictionary defines “business” as a “commercial enterprise carried on for profit.”<sup>1</sup> Black's Law Dictionary defines “open” as manifest, apparent, notorious.<sup>2</sup> Merriam-Webster defines open as “being in operation, especially ready for business, patronage, or use.”<sup>3</sup> Law Insider defines food business as “any undertaking, carrying out any of the activities related to any stage of production, processing and distribution of food.”<sup>4</sup>

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<sup>1</sup> Black's Law Dictionary, p. 239, 10<sup>th</sup> Ed. (2010).

<sup>2</sup> *Id.* at 1263.

<sup>3</sup> <https://www.merriam-webster.com/dictionary/open> (accessed Jul. 31, 2023).

<sup>4</sup> <https://www.lawinsider.com/dictionary/food-business>. (accessed July 31, 2023).

20. Given the definitions of “open” and “food business,” Sal opened a good business in Lubbock County, Texas, in violation of the non-compete agreement contained within the IP Agreement.

21. Sal falsely and fraudulently promised to Vitela that upon selling One Guy from Italy to Vitela and executing the IP Agreement, Sal would not compete with Vitela and would not open a food business in Lubbock County. Sal’s brother, Jerry, had knowledge of Sal’s false and fraudulent statements that induced Vitela to sign the IP Agreement. Jerry and Sal planned together to open Papa V Pizza, as part of Sal’s plan to defraud Vitela.

## **VI. CLAIMS FOR RELIEF**

### **Count 1 – Breach of Contract**

22. Pursuant to the IP Agreement, Sal agreed not to open a food business in Lubbock County, Texas, yet has opened a food business in Lubbock County, Texas, in violation of the non-compete contained within the IP Agreement.

23. Vitela performed his obligations under the IP Agreement. Vitela paid Sal \$100,000.00 for the intellectual property identified in the IP Agreement, including goodwill.

24. Vitela has been damaged by Sal’s opening of the competing restaurant business in Lubbock County, Texas, in violation of the IP Agreement.

25. The non-compete contained within the IP Agreement limits the geographic area and scope of activity subject to the non-compete. The non-compete was not limited in time; although the non-compete was heavily negotiated with Sal and his counsel and agreed to by Sal and his counsel.

26. Because the non-compete is not limited in time, Vitela seeks to reform the non-compete contained in the IP Agreement, **only if deemed necessary**, to include such limitation, if required by the Court.

27. A non-compete agreement is ancillary to the sale of the goodwill of a business. *See, e.g. Chandler v. Mastercraft Dental Corp. of Texas Inc.*, 739 S.W.2d 460, 464-65 (Tex. App.-Fort Worth 1987, writ denied).

28. A non-compete agreement in association with the sale of a business protects the buyer and the seller because it allows buyer to pay full value for the goodwill of a business with assurance that the seller will not shortly thereafter start a competing business.

29. A ten-year non-compete period is not unreasonable as a matter of law when ancillary to a contract for the sale of a business. *Heritage Operating, L.P. v. Rhine Brothers, LLC*, 2012 WL 2344864, \*6 (Tex. App.—Fort Worth June 21, 2012). “A noncompete signed by an owner selling a business is quite different than one signed by an employee.” *Id.* at \*5.

30. Furthermore, “Courts have been more inclined to enforce a long or limitless period barring competition after a sale of a business. *See, e.g., Oliver v. Rogers*, 976 S.W.2d 792, 801 (Tex. App.-Houston [1<sup>st</sup> Dist.] 1998, pet. denied) (holding that a lack of a time limitation did not render noncompete unreasonable as a matter of law); *Greenstein v. Simpson*, 660 S.W.2d 155, 159 (Tex. App.-Waco 1983, writ ref’d n.r.e.) (‘[A] person may agree [ ] in connection with the sale of his business[ ] not to re-enter a similar competitive business for the remainder of his life.’); *York v. Dotson*, 271 S.W.2d 347, 348 (Tex. Civ. App.-Fort Worth 1954, writ ref’d n.r.e.) (‘One may lawfully agree not to compete in a particular business, in a reasonably limited territory, during the remainder of his life. Such contracts are held not to be in restraint of trade.’); *Clay v. Richardson*, 290 S.W. 235, 236 (Tex. Civ. App.-Fort Worth 1926, writ disp’d w.o.j.) (upholding covenant of theater seller never to open a theater again in town where theater was located).” *Id.*

31. In *Heritage*, “Kendall L. was ‘semiretired,’ and he had ownership interests in other companies. Kendall L. had presented no evidence of any great hardship borne by him by staying

out of the area subject to the non-compete, nor did he demonstrate any injury to the public that outweighed the legitimate benefits that the negotiated noncompete granted to Heritage.” *Id.* (citing *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 681–82 (Tex. 1990) (noting that a noncompete is reasonable if neither hardship to the promisor nor public injury outweighs the covenant's legitimate benefits to the promisee).”

32. Vitela seeks to enforce the non-compete language of the IP Agreement as written. The unlimited term was negotiated. The territory of the non-compete was limited to Lubbock County, Texas. Sal represented that he did not intend to open a food business in Lubbock County, Texas, at the time of the negotiation of the terms of the IP Agreement.

33. Further, Sal represented himself as retired after the sale of *One Guy From Italy* located on 50<sup>th</sup> Street in 2017. See Ex. B at 41:8-12. The IP Agreement was signed in August 2020, after the sale of the other *One Guy From Italy* location, which was sold to an entity in which Vitela held an interest. A lifetime non-compete is not unreasonable given these facts.

34. Alternatively, Vitela seeks to reform the non-compete to a term of 10-years and no fewer than 5-years from the date of execution of the IP Agreement.

## **Count 2 – Fraud**

35. Sal represented to Vitela that if Vitela would pay him \$100,000.00 and sign the IP Agreement, that Sal would abide by a non-compete agreement and not open a food business in Lubbock County. This representation was material and false, and when Sal made this representation, Sal knew that it was false or made the representation recklessly, as a positive assertion, and without knowledge of its truth. Further, Sal made this representation with the intent that Vitela act on it. Vitela relied on this representation, causing him injury. Accordingly, Vitela asserts a cause of action against Sal for fraud under Texas Common Law.



### **Count 3 – Conspiracy to Commit Fraud**

36. Defendants were a member of a combination of two or more persons, and had an object of their combination to accomplish an unlawful purpose, or a lawful purpose by unlawful means. Defendants had a meeting of the minds on the object or course of action, namely, defrauding Vitela by having him pay Sal \$100,000.00 in exchange for a non-compete agreement that Sal knew he would not honor, thus paving the way for Sal to have additional financial capital with which to invest with Jerry and together open their competing restaurant, Papa V Pizza. Sal committed an unlawful and overt act to through the object or course of action, namely, making the false representation to Vitela as described above. Finally, Vitela suffered economic injury as approximate result of the wrongful act. Accordingly, Vitela asserts a cause of action against Defendants for conspiracy to commit fraud.

### **Count 4 – Declaratory Judgment**

37. Vitela re-alleges and incorporates by reference each of the allegations made above as though the allegations were fully set forth herein.

38. Sal has opened a food business in Lubbock County, Texas, in violation of the IP Agreement.

39. Accordingly, Vitela asks the Court to issue a declaration that Sal has breached the IP Agreement by his actions in opening a competing food business in violation of the non-compete provision of the IP Agreement.

### **Count 5 – Temporary and Permanent Injunctive Relief Under Tex. Bus. & Com. Code Ann. §§ 15.50, 15:51(a), and 15.52**

40. Vitela re-alleges and incorporates by reference each of the allegations made above as though the allegations were fully set forth herein.

41. “Under the common law, a party seeking an injunction must show that without injunctive relief he will suffer irreparable injury for which he has no adequate legal remedy.” *Heritage Operating, LP*, 2012 WL 2344864, \*6 (citing *Tom James Co. v. Mendrop*, 819 S.W.2d 251, 253 (Tex. App.-Fort Worth 1991, no writ). However, if a party relies on a statute that defines the requirements for injunctive relief, the express statutory language “supersedes common law requirements.” *Id.* (citing *Butler v. Arrow Mirror & Glass, Inc.*, 51 S.W.3d 787, 795 (Tex. App.-Houston [1<sup>st</sup> Dist.] 2001, no pet.). Damages, *injunctive relief, or both* are provided by the Covenants Not to Compete Act for a breach of a non-compete by the promisor. Tex. Bus. & Com. Code Ann. § 15.51(a) (“... a court may award ... damages, injunctive relief, or both damages and injunctive relief for a breach by the promisor of the covenants”).

42. Thus, a party seeking injunctive relief under the Covenants Not to Compete Act does not have to show irreparable injury for which he has no adequate legal remedy as a prerequisite to injunctive relief. *Heritage Operating, L.P.*, 2012 WL 2344864, \*6 (citing *Letkeman v. Reyes*, 299 S.W.3d 482, 486 (Tex. App.-Amarillo 2009, no pet.) (“It is enough simply to prove a distinct or substantial breach.”); *see also* Tex. Bus. & Com. Code Ann. § 15.52 (stating that “the procedures and remedies ... provided by Section 15.51 ... are exclusive and preempt any other criteria for enforceability of a covenant not to compete or procedures and remedies in an action to enforce a covenant not to compete under common law or otherwise”).

43. Vitela seeks injunctive relief under the Covenants Not to Compete Act and therefore is entitled to injunctive relief without having to show irreparable injury as a prerequisite to injunctive relief. Further, because the Covenants Not to Compete Act provides procedures and remedies under Section 15.51, such procedures and remedies are exclusive and preempt any other

criteria for enforceability of a covenant not to compete or procedures and remedies in an action to enforce a covenant not to compete under common law.

44. For these reasons, Vitela is entitled to seek injunctive relief under the Covenants Not to Compete Act. Further, Vitela is required only to prove a distinct or substantial breach by Sal of the covenant not to compete. Sal has opened a food business in Lubbock County, Texas, in violation of the covenant not to compete contained in the IP Agreement. Therefore, Vitela is entitled to injunctive relief.

45. After entry of a Temporary Injunction, which should persist through trial on the merits, and thereafter, Vitela requests the entry of a permanent injunction.

#### **VII. ATTORNEYS' FEES**

46. Vitela seeks recovery of attorneys' fees under Tex. Civ. Prac. & Rem. Code § 37.009 and § 38.001.

#### **VIII. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Vitela respectfully requests that the Court issue a Temporary Restraining Order, and after a hearing on Vitela's Application for Temporary Injunction, set this case for trial on the merits, and after a trial, that the Court grant Vitela the following relief against Defendants, as follows:

- a. A temporary and permanent injunction, enjoining Sal from his violations of the IP Agreement, as stated above;
- b. A declaration that Sal breached the IP Agreement when he opened a food business in Lubbock County, Texas;
- c. Confirmation of the unlimited term of the non-compete agreement or reformation of the non-compete agreement within the IP Agreement, if required by the Court;

- d. Actual and special damages to be proven at trial on all issues available;
- e. Punitive damages;
- f. Attorneys' fees and costs of suit;
- g. Pre-judgment and post-judgment interest at the maximum rate allowed by law; and
- h. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Fernando M. Bustos

Fernando M. Bustos; SBN: 24001819

[fbustos@bustoslawfirm.com](mailto:fbustos@bustoslawfirm.com)

Deirdre Kelly Trotter; SBN: 45006069

[dtrotter@bustoslawfirm.com](mailto:dtrotter@bustoslawfirm.com)

BUSTOS LAW FIRM, P.C.

P.O. Box 1980

Lubbock, Texas 79408-1980

(806) 780-3976

(806) 780-3800 FAX

ATTORNEYS FOR PLAINTIFF

### **CERTIFICATE OF SERVICE**

This is to certify that on August 3, 2023, a true and correct copy of the foregoing document was served on all counsel of record through the electronic Texas file and serve system.

/s/ Fernando M. Bustos

Fernando M. Bustos

**DECLARATION OF GABRIEL VITELA**

My name is Gabriel Vitela, my date of birth is September 20, 1978, and my address is 6801 Nashville Avenue, Lubbock, Lubbock County, Texas 79413, the United States of America. I declare under penalty of perjury that the factual allegations in the Plaintiff's First Amended Petition and Application for Temporary and Permanent Injunctions are within my personal knowledge and are true and correct.

Executed in Lubbock County, State of Texas on August 3, 2023, 2023.

GABEVITELA ENTERPRISE LLC

By:   
Gabe Vitela, Managing Member

DigiSigner Document ID: 6e0a3bda-9905-4279-b81c-faafe20201de

## Signer

Email: gabevitela@gmail.com  
IP Address: 2600:1700:5861:3740:c48f:5f70:e083:48a9

## Signature



Event	User	Time	IP Address
Create as copy	adobberstein@bustoslawfirm.com	8/3/23 4:56:30 PM EDT	66.76.183.26
Send for signing	adobberstein@bustoslawfirm.com	8/3/23 4:57:36 PM EDT	66.76.183.26
Open document	gabevitela@gmail.com	8/3/23 5:41:33 PM EDT	2600:1700:5861:3740:c48f:5f70:e083:48a9
Sign document	gabevitela@gmail.com	8/3/23 5:43:04 PM EDT	2600:1700:5861:3740:c48f:5f70:e083:48a9
Close document	gabevitela@gmail.com	8/3/23 5:43:04 PM EDT	2600:1700:5861:3740:c48f:5f70:e083:48a9

## **INTELLECTUAL PROPERTY RIGHTS PURCHASE AND TRANSFER AGREEMENT**

This Intellectual Property Rights Purchase and Transfer Agreement ("Agreement") is made and entered into effective on the date shown below by and between Sal Mazzamuto, 5907 93<sup>rd</sup> Street, Lubbock, Lubbock County, Texas 79424 (together "Seller"), and GabeVitela Enterprise, LLC, a Texas limited liability company, 6801 Nashville Avenue, Lubbock, Lubbock County, Texas 79413 ("Buyer").

### **Recitals**

WHEREAS, Seller represents, subject to the terms and provisions hereof, that Seller owns or has the right to use certain Intellectual Property Rights (hereafter Asset) identified below and subject to this Agreement and is duly authorized to execute, sell, and deliver said Asset, free of any and all liens or encumbrances.

WHEREAS, Buyer represents, subject to the terms and provisions hereof, that it is duly authorized and able to execute, deliver, and perform under this Agreement;

WHEREAS, Seller desires to sell all rights, title, and interest in certain assets, and Buyer desires to purchase all rights, title, and interest in certain assets pursuant to the terms of this Agreement.

### **DEFINITIONS**

Intellectual Property Rights means all (i) Internet Domain names, trademarks, service marks, trade dress, trade names, logos and corporate names and registrations and applications for registration thereof together with all of the goodwill associated therewith, (ii) copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof, and (iii) copies and tangible embodiments thereof (in whatever form or medium), in connection with the tradename "One Guy From Italy" and any derivation thereof. The definition of Intellectual Property is restricted to the use of the trade name of "One Guy from Italy." Buyer understands that Seller has not filed any trademark, tradename, or copyright applications with regard to the name "One Guy from Italy" and that Seller does not represent that any registerable marks or names exist.

### **AGREEMENT**

THEREFORE, in consideration of the mutual promises and the representations and warranties herein made, the parties agree as follows:

#### **Purchase and Sale**

1. On the terms and subject to all of the conditions of this Agreement and the performance by each of the parties to this Agreement of their respective obligations under this Agreement, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer all of the Intellectual Property Rights as defined above.

### **Purchase Price and Other Conditions and Terms of Sale**

2. Consideration. The purchase price of the Asset is ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

3. Other Conditions and Terms of Sale.

3.1 Buyer and Seller agree that Seller has the right to open any type of restaurant after Closing of this Agreement on the following conditions and terms:

- (a) Seller will not use the name "One Guy from Italy" in any form or fashion, even by word of mouth in association with such restaurant;
- (b) Seller will not use any symbol or artwork, whether or not registered or copyrighted, that would represent or attempt to represent such restaurant is or was associated with One Guy from Italy.
- (c) Seller may any existing recipes, ingredients, or suppliers of Seller with such restaurant;
- (d) Seller cannot open any food business in Lubbock County, Texas, without the written consent of GabeVitela Enterprise, LLC;
- (e) Seller does not need consent of GabeVitela Enterprise, LLC to open any food business outside of Lubbock County, Texas;
- (f) Seller cannot sell or share the recipes, methods, and formulas currently used by Seller, or which are a close derivative of the currently used recipes, methods, and formulas to any third party;
- (g) Seller warrants that no part of the assets transferred pursuant to this agreement are owned by One Guy from Italy Pizza & Restaurant, Inc.; and,
- (h) Seller agrees to change the name of his corporation, One Guy from Italy Pizza & Restaurant, Inc., to remove the phrase "One Guy from Italy" from the name within 90 days after Closing.

### **Closing**

4. Closing. The Closing of the transaction contemplated by this Agreement (the "Closing") shall occur at 10:00 o'clock a.m. on September 21, 2020.

Closing of this sale, and the obligations of both parties hereto is conditioned upon the Closing of the sale of the 1101 University Avenue location of "One Guy from Italy" by One Big Cat, Inc. to SDMSG, Ltd.



### Time of the Essence

5. Time is of the essence in this Agreement. If the date specified in this Agreement for giving any notice or taking any action is not a business day, then the date for giving such notice or taking such action shall be the next day which is a business day.

### Miscellaneous Provisions

6. Representations and Authority of the Parties. Each party to this Agreement represents that such party is fully authorized and empowered to execute this Agreement and to close the transaction contemplated hereby pursuant to the terms and provisions hereof. These representations and warranties shall survive the Closing.

7. Notices. All notices, requests, demands, and other communications required or permitted by this Agreement shall be in writing and shall be deemed to have been delivered if delivered in person to the party entitled thereto, against receipt, or if deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the party entitled thereto at the address shown below. In the case of mailing, the time of receipt shall be deemed to be three days after depositing in the mail addressed as follows:

(a) In case of Seller, to:

Sal Mazzamuto  
5907 93<sup>rd</sup> Street  
Lubbock, Texas 79424

with a copy to:

Don C. Dennis  
Boerner, Dennis & Franklin, PLLC  
P.O. Box 1738  
Lubbock, Texas 79408

(b) In case of Buyer, to:

Gabe Vitela Enterprise, LLC  
6801 Nashville Avenue  
Lubbock, TX 79413  
Attn: Gabe Vitela  
with copy to:

Fernando M. Bustos  
Bustos Law Firm, P.C.  
P. O. Box 1980  
Lubbock, Texas 79408-1980

8. Default. If all the conditions of sale of the transaction contemplated herein are met in accordance with this Agreement or the Seller refuses to go forward to the Closing or otherwise fails or refuses to consummate the sale, Buyer shall have the right to enforce specific performance or shall have the right to pursue any other legal or equitable remedies available to it. If all the conditions to the sale and the closing of the transaction contemplated hereby are met in accordance with this Agreement except that Buyer refuses to go forward to the Closing or otherwise fails or refuses to consummate the sale, Seller may enforce specific performance or pursue any other legal or equitable remedy available to them.

9. Law Governing. This Agreement shall be construed in accordance with the laws of the State of Texas. Exclusive jurisdiction and venue shall be in the state or federal courts of Lubbock County, Texas.

10. Successors and Assigns. This Agreement shall inure to the benefit of the parties hereto and to their respective heirs, personal representatives, successors, and assigns.

11. Survival of Representations. All representations, covenants, and warranties contained herein shall survive the Closing of the transaction contemplated hereby.

12. Entirety. This Agreement contains the entire agreement of the parties with respect to the matters covered hereby and supersedes all prior and contemporaneous agreements by the parties. It may be amended or modified only in writing executed by both parties.

13. Counterparts. This Agreement and any document or other instrument delivered hereunder may be executed in counterparts, each of which shall be deemed an original instrument, but which together shall constitute but one and the same instrument. Any counterpart of this agreement or any document or other instrument delivered hereunder may be delivered by facsimile or by electronic mail, to be followed by delivery of the original as soon as practicable.

14. Modification/Waiver. This Agreement may not be modified or amended except by an instrument in writing signed by both parties. Any party hereto may, only by an instrument in writing, waive compliance by another party with any term or provision of this Agreement on the part of such other party hereto to be complied with or performed. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

15. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable.

16. Attorney's Fees. If any action at law or in equity is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party, which fees may be set by the court at the trial of such action or may be enforced in a

separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded.

17. Fees and Costs. Each party shall bear the cost of its attorneys' fees, expenses, and any closing costs associated this Agreement for Sale and Purchase.

18. Third Party Beneficiary. No provision of this Agreement shall in any way inure to the benefit of any third party (including the public at large) so as to constitute any such person a third party beneficiary of this Agreement or any provision hereof, or otherwise give rise to any cause of action in any person not a party hereto.

19. Contra Proferentem. Seller and Buyer acknowledge that they have read this Agreement, have had the opportunity to review it with an attorney of their respective choice, and have agreed to all its terms. Under these circumstances, Seller and Buyer agree that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this Agreement and that in the event of any ambiguity in any of the terms or conditions of this Agreement, including any Exhibit hereto and whether or not placed of record, such ambiguity shall not be construed for or against any party hereto on the basis that such party did or did not author same.

20. Seller to Use Reasonable Efforts. Seller shall use all reasonable efforts, and cooperate with the Buyer, to obtain all necessary approvals, consents or waivers, or to resolve any impracticalities of transfer necessary to assign or convey to Buyer the Asset as soon as practicable; provided, however, that neither Seller nor Buyer shall be obligated to pay any consideration therefor except for filing fees and other ordinary administrative charges which shall be paid by Seller to the third party from whom such approval, consent or waiver is requested. Such approvals, consents, and waivers shall be in favor of the Buyer.

IN WITNESS WHEREOF, this Agreement is executed and effective as of the 24 day of AUG, 2020.


[signatures follow]

**SELLER:**

  
\_\_\_\_\_  
Sal Mazzamuto

**BUYER:**

**GABEVITELA ENTERPRISE, LLC**

By:   
\_\_\_\_\_  
Name: Gabe Vitela  
Title: Managing Member

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CAUSE NO. DC-2022-CV-1560

IN RE: ) IN THE 72ND DISTRICT COURT  
)  
) OF  
GABEVITELA ENTERPRISES, )  
LLC ) LUBBOCK COUNTY, TEXAS

-----

ORAL DEPOSITION OF  
SALVATORE MAZZAMUTO  
MARCH 9, 2023

-----

ORAL DEPOSITION OF SALVATORE MAZZAMUTO, produced as  
a witness at the instance of the Petitioner, and duly  
sworn, was taken in the above-styled and numbered cause  
on March 9, 2023, from 9:03 a.m. to 10:40 a.m., before  
Elaine Shogren, CSR in and for the State of Texas,  
reported by machine shorthand, at the law offices of  
Boerner, Dennis & Franklin, PLLC, 920 Avenue Q, Lubbock,  
Texas, pursuant to the Texas Rules of Civil Procedure  
and the provisions stated on the record or attached  
hereto.

**EXHIBIT  
B**

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A P P E A R A N C E S

FOR THE PETITIONER:

FERNANDO M. BUSTOS  
DEIRDRE KELLY TROTTER  
Bustos Law Firm, P.C.  
PO Box 1980  
1001 Main Street, Suite 501  
Lubbock, Texas 79408-1980  
(806) 780-3976  
fbustos@bustoslawfirm.com

FOR THE RESPONDENT:

DON C. DENNIS  
ORION HUTCHIN  
Boerner, Dennis & Franklin, PLLC  
920 Avenue Q  
Lubbock, Texas 79401  
(806) 763-0044  
dcdennis@bdflawfirm.com

ALSO PRESENT:

Gabriel Vitela  
Jerry Mazzamuto

1 is G -- what is it? G-h --

2 MR. DENNIS: G-h-a-n-d-o-u-r, I believe.

3 Q. (BY MR. BUSTOS) Okay. Ghandour, okay.

4 A. Yeah, Ghandour.

5 Q. All right.

6 MR. DENNIS: He is a broker.

7 MR. BUSTOS: Yeah.

8 Q. (BY MR. BUSTOS) How did Mr. Ghandour introduce  
9 you to Mr. Vitela?

10 A. Mr. Ghandour, I told him I want to sell the  
11 place because I want to retire. And he just bring him  
12 as a buyer.

13 Q. Okay. So this is an arms-length transaction?

14 A. What do you mean arm length?

15 Q. You had never known Mr. Vitela before  
16 Mr. Ghandour introduced you; right?

17 A. No.

18 Q. All right. So as part of this transaction you  
19 sold the 50th Street location of One Guy From Italy to  
20 Mr. Vitela. Is that right?

21 A. Yes, sir.

22 Q. Did you sell the goodwill of the business?

23 A. What do you mean goodwill?

24 Q. If you don't know -- did you sell the inventory  
25 that was in the business?

1 Q. So after you signed your trade name agreement  
2 with Mr. Vitela and he paid you a hundred thousand  
3 dollars, were you out of the restaurant business in  
4 Lubbock?

5 A. I have been a long time out of business in  
6 restaurant in Lubbock.

7 Q. In less than two years after you sold the  
8 trademark to Mr. Vitela you bought a restaurant building  
9 in Lubbock; right?

10 A. Yes, sir.

11 Q. The restaurant building on 8008 Abbeville;  
12 correct?

13 A. It was an investment.

14 Q. And it happened to be a restaurant building;  
15 right?

16 A. Yeah.

17 Q. With all the --

18 A. Equipment.

19 Q. -- that you would need for a restaurant; right?

20 A. Yeah.

21 (Exhibit 14 marked.)

22 Q. (BY MR. BUSTOS) All right. Let's take a look  
23 at Exhibit 14. Exhibit 14 is the Commercial Contract  
24 for Totomazza, Inc. --

25 A. Uh-huh.



1 That was the reduction in the purchase price --

2 A. Yeah.

3 Q. -- because you fixed the place up?

4 A. Yeah.

5 Q. Okay. That makes sense. All right.

6 (Exhibit 16 marked.)

7 Q. (BY MR. BUSTOS) Let's take a look at  
8 Exhibit 16. And this was the deed then; right?

9 A. Yeah.

10 Q. On the building at 8000 -- it says 8004  
11 Abbeville.

12 A. No, 8008.

13 Q. Okay. I wanted to make sure we got that  
14 correct.

15 A. Yeah.

16 Q. All right. Before you bought this location,  
17 did you talk to Jerry and say "Hey, Jerry, I am going to  
18 buy this location. Do you want to put a restaurant  
19 there?"

20 A. No. But I email if he wants to open a  
21 restaurant because he wanted to open a restaurant with  
22 Gabe. He wanted him as a partner too. He looked for a  
23 restaurant. So -- and I do -- I am investing. That is  
24 why I did it.

25 Q. Okay. You invested?

1 A. Invested. That is it.

2 Q. Thank you. Do you know if Jerry was working at  
3 the University location of One Guy From Italy in April  
4 and May of 2002?

5 A. Yeah, he working there. And he was  
6 [indecipherable], him and his son.

7 Q. Is Jerry a shareholder in Totomazza, Inc.?

8 A. Not at all.

9 Q. Okay. Is he an officer or a director?

10 A. Not at all.

11 Q. All right. Let's --

12 A. He is a tenant.

13 (Exhibit 17 marked.)

14 Q. (BY MR. BUSTOS) Okay. Let's take a look at  
15 Exhibit 17. This is the Certificate of Formation for  
16 Papa V, Inc. filed on May 13th, 2022. Do you see that?

17 A. Okay.

18 Q. Okay. As far as you know, is Brad Smith your  
19 brother Jerry's accountant also?

20 A. I don't know. He might have -- I don't know.

21 Q. So Papa V, Inc. was formed on May 13th, 2022,  
22 four days before Totomazza bought the restaurant  
23 building; right?

24 A. I don't know.

25 Q. Okay. Look at the date here. The top

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CAUSE NO. DC-2022-CV-1560

IN RE: ) IN THE 72ND DISTRICT COURT  
)  
) OF  
GABEVITELA ENTERPRISES, )  
LLC ) LUBBOCK COUNTY, TEXAS

REPORTER'S CERTIFICATION  
DEPOSITION OF SALVATORE MAZZAMUTO  
MARCH 9, 2023

I, Elaine Shogren, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

That the witness, SALVATORE MAZZAMUTO, was duly  
sworn by the officer and that the transcript of the oral  
deposition is a true record of the testimony given by  
the witness;

That the deposition transcript was submitted on  
\_\_\_\_\_, 2023, to the witness or to the  
attorney for the witness for examination, signature and  
return to me;

That the amount of time used by each party at the  
deposition is as follows:

FERNANDO M. BUSTOS - 1 hour 20 minutes  
DON C. DENNIS - 0 minutes

That pursuant to information given to the  
Deposition officer at the time said testimony was taken,

1 the following includes counsel for all parties of  
2 record:

3 FERNANDO M. BUSTOS, Attorney for Petitioner  
4 DON C. DENNIS, Attorney for Respondent

5 I further certify that I am neither counsel for,  
6 related to, nor employed by any of the parties or  
7 attorneys in the action in which this proceeding was  
8 taken, and further that I am not financially or  
9 otherwise interested in the outcome of the action.

10 Further certification requirements pursuant to Rule  
11 203 of TRCP will be certified to after they have  
12 occurred.

13 Certified to by me this 22nd day of March, 2023.



16 *Elaine Shogren*

17 Elaine Shogren, Texas CSR 5881  
18 Expiration Date: 1/31/2024  
19 Rogers, Harvey & Crutcher  
20 Firm Registration No. 168  
21 709 Broadway  
22 Lubbock, Texas 79401  
23 (806) 744-7754  
24  
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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on \_\_\_\_\_;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Fernando M. Bustos, Custodial Attorney;

That \$\_\_\_\_\_ is the deposition officer's charges to the Petitioner for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this the \_\_\_\_ day of \_\_\_\_\_, 2023.

---

Elaine Shogren, Texas CSR 5881  
Expiration Date: 1/31/2024  
Rogers, Harvey & Crutcher  
Firm Registration No. 168  
709 Broadway  
Lubbock, Texas 79401  
(806) 744-7754



COMMERCIAL CONTRACT - IMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS, INC. IS NOT AUTHORIZED. ©Texas Association of REALTORS, Inc. 2021

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: SK&H PROPERTIES LLC

Address: 8004 Abbeville Ave, Lubbock, TX 79424-2806

Phone: E-mail:

Fax: Other:

Buyer: Totomaza, Inc

Address: 4501 50th St, Lubbock, TX 79414-3613

Phone: E-mail: joseph.lubbock@gmail.com

Fax: Other:

2. PROPERTY:

A. "Property" means that real property situated in Lubbock County, Texas at 8008 ABBEVILLE AVE, LUBBOCK, TX 79424 (address) and that is legally described on the attached Exhibit FARRAR ESTATES TR E-2-X or as follows:

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 (TXR-1930) or (TXR-1946).)

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 \$ 550,000.00

B. Sum of all financing described in Paragraph 4 \$

C. Sales price (sum of 3A and 3B) \$ 550,000.00

(TXR-1801) 09-01-21

Initialed for Identification by Seller

Handwritten initials 'TW' in a box

and Buyer

Page 1 of 15

EXHIBIT C

8008 ABBEVILLE AVE, LUBBOCK, TX 79424

Commercial Contract - Improved Property concerning \_\_\_\_\_

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 (TXR-1931).
- B. **Assumption:** In accordance with the attached Commercial Contract Financing Addendum (TXR-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 (TXR-1931) in the amount of \$ \_\_\_\_\_.

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ **\$3,000.00** as earnest money with \_\_\_\_\_ **Joy Title** (title company) at \_\_\_\_\_ (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 30 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.

Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

B. Survey: Within 10 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/NSPS 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/NSPS 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  Buyer (updating party), will, at the updating party's expense, obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to the other party and the title company within 30 days after the title company notifies the parties that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 30 days if necessary for the updating party to deliver an acceptable survey within the time required. The other party will reimburse the updating party \_\_\_\_\_ (insert amount or percentage) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- (1) Within \_\_\_\_\_ 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 \_\_\_\_\_ days after Buyer receives the last of 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 the commitment or survey is revised or any new document evidencing a title exception is delivered, Buyer may object to any new matter revealed in such revision or new document. Buyer's objection must be made within the same number of days stated in this paragraph, beginning when the revision or new document is delivered to Buyer. 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.

(TXR-1801) 09-01-21

Initialed for Identification by Seller [Signature] and Buyer [Signature]

Page 3 of 15



Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

(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.

**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: \_\_\_\_\_

B. Feasibility Period: Buyer may terminate this contract for any reason within 25 days after the effective date (feasibility period) by providing Seller written notice of termination.

(1) Independent Consideration. (Check only one box and insert amounts.)

(a) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 100.00 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.

(b) 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.

(2) Feasibility Period Extension: Prior to the expiration of the initial feasibility period, Buyer may extend the feasibility period for a single period of an additional \_\_\_\_\_ days by depositing additional earnest money in the amount of \$ \_\_\_\_\_ with the title company. If no dollar amount is stated in this Paragraph or if Buyer fails to timely deposit the additional earnest money, the extension of the feasibility period will not be effective.

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

Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

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 \_\_\_\_\_ days after the effective date, Seller will deliver to Buyer: (Check all that apply.)

- (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- (b) copies of all current leases, including any mineral 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, utility, 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 and personal property tax statements for the Property for the previous 2 calendar years;
- (o) Tenant reconciliation statements including, operating expenses, insurance and taxes for the Property from \_\_\_\_\_ to \_\_\_\_\_; and
- (p) \_\_\_\_\_

(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 in any format; and
- (c) deliver to Seller 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.

Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

**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;
  - (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
  - (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 \_\_\_\_\_ 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 TXR 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: Keller Williams Realty

Agent: Daniel Stanton

Address: \_\_\_\_\_

Phone & Fax: \_\_\_\_\_

E-mail: Dstanton@usa.com

License No.: 423463

Cooperating Broker: Caprock Realty Group

Agent: Joseph Ghandour

Address: 4501 50th St Lubbock, Tx 79414

Phone & Fax: (806)786-0111

E-mail: joseph.lubbock@gmail.com

License No.: 559996

- Principal Broker: (Check only one box)
- represents Seller only.
  - represents Buyer only.
  - is an intermediary between Seller and Buyer.

Cooperating Broker represents 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:

(TXR-1801) 09-01-21      Initialed for Identification by Seller DS TW and Buyer [Signature]

Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

Principal Broker a total cash fee of:  
 \_\_\_\_\_ % of the sales price.  
 \_\_\_\_\_

Cooperating Broker a total cash fee of:  
 3.000 % 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.*

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)  5 days after the expiration of the feasibility period.
- \_\_\_\_\_ (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) service, utility, 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 with 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;

Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

- (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.

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.)*

**Seller to pay the Buyer \$75000.00 at Closing .**

**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.

**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.

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Initialed for Identification by Seller  and Buyer 

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(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:

- (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.

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Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

- (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.

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 (TXR-1930) or (TXR-1946);
- (3) Commercial Contract Financing Addendum (TXR-1931);
- (4) Commercial Property Condition Statement (TXR-1408);
- (5) Commercial Contract Addendum for Special Provisions (TXR-1940);
- (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TXR-1906);
- (7) Notice to Purchaser of Real Property in a Water District (MUD);
- (8) Addendum for Coastal Area Property (TXR-1915);
- (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1916);
- (10) Information About Brokerage Services (TXR-2501);
- (11) Information About Mineral Clauses in Contract Forms (TXR-2509);
- (12) Notice of Obligation to Pay Improvement District Assessment (TXR-1955, PID);

Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE. LUBBOCK, TX 79424

- 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. ATTORNEYS 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 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 (TXR-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;

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Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

(13)

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

E. Buyer  may  may not 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 (*the Addendum for Coastal Area Property (TXR-1915) may be used*).

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 (*the Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1916) may be used*).

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.

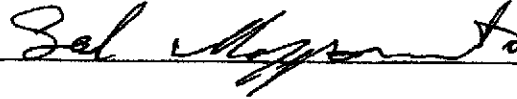
Commercial Contract - Improved Property concerning 8008 ABBEVILLE AVE, LUBBOCK, TX 79424

- 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 (*the Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TXR-1906) may be used*).
- 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."
- K. 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: \_\_\_\_\_
- L. PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.
- 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.**

Seller: SK&H PROPERTIES LLC

Buyer: Totomaza, Inc



By: Tracy Wilson DocuSigned by:  
By (signature): *Tracy Wilson*  
Printed Name: TRACY WILSON  
Title: ceo

By: Sal Mazzamuto  
By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Commercial Contract - Improved Property concerning **8008 ABBEVILLE AVE, LUBBOCK, TX 79424**

**AGREEMENT BETWEEN BROKERS**

*(use only if Paragraph 9B(1) is effective)*

Principal Broker agrees to pay Caprock Realty Group (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- \$ \_\_\_\_\_, or
- 3.000** % of the sales price, or
- \_\_\_\_\_ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: \_\_\_\_\_ Cooperating Broker: Caprock Realty Group

By: \_\_\_\_\_ By: Joseph Ghandour

**ATTORNEYS**

Seller's attorney: \_\_\_\_\_ Buyer's attorney: \_\_\_\_\_  
 Address: \_\_\_\_\_ Address: \_\_\_\_\_  
 Phone & Fax: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

Seller's attorney requests copies of documents, notices, and other information:

- the title company sends to Seller.
- Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:

- the title company sends to Buyer.
- Seller sends to Buyer.

**ESCROW RECEIPT**

The title company acknowledges receipt of:

- A. the contract on this day April 28, 2022 (effective date);
- B. earnest money in the amount of \$ 3000.00 in the form of Check # 1009 on April 28, 2022.

Title company: Joy Title Address: Joy Title  
4021 112th  
Lubbock, TX 79423

By: [Signature] Heather Cooper P: 806.300.0083  
Joy Title F: 806.300.0037

Assigned file number (GF#): 22-1378 heather@jtitleco.com E-mail:



APPROVED BY THE TEXAS REAL ESTATE COMMISSION (TREC)  
FOR VOLUNTARY USE

10-10-11

**NON-REALTY ITEMS ADDENDUM**

TO CONTRACT CONCERNING THE PROPERTY AT

**8008 Abbeville Ave, Lubbock, TX 79424-2806**

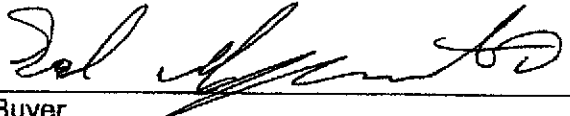
(Address of Property)

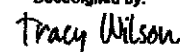
A. For an additional sum of \$ \_\_\_\_\_ and other and good valuable consideration, Seller shall convey to Buyer at closing the following personal property (specify each item carefully, include description, model numbers, serial numbers, location, and other information):

**All : refrigeration , Freezers , Sandwich Tables , Prep tables ,tables ,chairs , Sinks ,Patio tables and Chairs ,shelves .**

B. Seller represents and warrants that Seller owns the personal property described in Paragraph A free and clear of all encumbrances.

C. Seller does not warrant or guarantee the condition or future performance of the personal property conveyed by this document.

  
Buyer

DocuSigned by:  
  
Seller

Buyer

Seller

This form has been approved by the Texas Real Estate Commission for voluntary use by its licensees. Copies of TREC rules governing real estate brokers, salesperson and real estate inspectors are available at nominal cost from TREC. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (<http://www.trec.texas.gov>)

(TXR-1924) 10-10-11

TREC NO. OP-M

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Amy Dobberstein on behalf of Fernando Bustos

Bar No. 24001819

adobberstein@bustoslawfirm.com

Envelope ID: 78192671

Filing Code Description: APLD - Amended Pleading

Filing Description: Plaintiff's First Amended Petition and Application for Temporary and Permanent Injunctions

Status as of 8/4/2023 10:09 AM CST

Associated Case Party: GabeVitela Enterprise LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Fernando M.Bustos		fbustos@bustoslawfirm.com	8/3/2023 4:57:49 PM	SENT
Deirdre Trotter		dtrotter@bustoslawfirm.com	8/3/2023 4:57:49 PM	SENT
Amy Dobberstein		adobberstein@bustoslawfirm.com	8/3/2023 4:57:49 PM	SENT
Elizabeth Seeley-Verkamp		eseeley-verkamp@bustoslawfirm.com	8/3/2023 4:57:49 PM	SENT
Zebbe Dee AnnHernandez		zhernandez@bustoslawfirm.com	8/3/2023 4:57:49 PM	SENT

Associated Case Party: Salvatore Mazzamuto

Name	BarNumber	Email	TimestampSubmitted	Status
Lesley ACooper		lescoop@bdfllawfirm.com	8/3/2023 4:57:49 PM	SENT
Susanna Mason		smason@bdfllawfirm.com	8/3/2023 4:57:49 PM	SENT
Tiffany Perkins		tperkins@bdfllawfirm.com	8/3/2023 4:57:49 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Orion Hutchin	24122288	ohutchin@bdfllawfirm.com	8/3/2023 4:57:49 PM	SENT
Don Dennis		dcdennis@bdfllawfirm.com	8/3/2023 4:57:49 PM	SENT