

REAL ESTATE SALE CONTRACT

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: Ronald J. Sommers, Trustee, Case No. 19-36737, In re Pestova Holdings, LLC, US Bankruptcy Court Southern District of Texas, Houston Division and not individually

Address: 2800 Post Oak Boulevard, 61st Floor
City: Houston State: TX Zip: 77056
Phone: (713) 960-0303 Fax: (713) 892-4800
Email: rsommers@nathansommers.com

Buyer: _____
_____ (or its assigns)

Address: _____
City: _____ State: _____ Zip: _____
Phone: (____) ____-____ Fax: (____) ____-____
Email: _____

2. **PROPERTY:**

A. The term "Property" means the real property and improvements described as:

SEE EXHIBIT "A"

more commonly known as 10444 Rosecroft Dr., Houston, Texas 77048. The Sales Price (as set forth in Paragraph 3 below) is not dependent upon the exact number of square feet comprising the Property. Any statement in the legal description of the Property contained in any survey or the Deed as to the area or quantity of land is not a representation that such area or quantity is correct, but is made only for informational and/or identification purposes.

B. Seller will sell and convey the Property and all rights and appurtenances pertaining thereto.

3. **SALES PRICE:**

A. Purchase Price \$ _____
B. 10% Buyer's Premium \$ _____
C. Total Sales Price (sum of 3.A. and 3.B.) \$ _____

4. **EARNEST MONEY:**

A. Concurrent with the execution of this contract, Buyer shall deposit \$ _____ (10%) of the Sales Price as a NON-REFUNDABLE earnest money (the "Earnest Money Deposit") with the Title Company. The Earnest Money Deposit will be applied to the Sales Price at closing. Buyer's sole remedy for the Deposit is defined in Paragraph 14.A. below.

- B. If Buyer fails to deposit the earnest money as required by this contract, then this contract will immediately terminate and be of no further force and effect.

5. **TITLE POLICY AND SURVEY:**

- A. Title Policy: Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the "Title Policy") issued by Alamo Title, 1800 Bering Dr. #400, Houston, Texas 77057 (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 those title exceptions present on the Commitment.
- B. Survey: Buyer may obtain a survey of the Property at Buyer's expense. If Buyer elects to obtain a survey, then Buyer shall deliver a copy of the survey to Seller.
- C. Acceptance of Deed and Title Policy: Buyer's acceptance of the Deed and Title Policy issued by the Title Company shall be deemed to be compliance by Seller with any requirements with respect to matters of record and conclusive of said purchaser's acceptance of the title represented thereby and as being in accordance with the obligations of Seller as set forth herein.
- D. Buyer's Objections to the Commitment and Survey: Buyer hereby waives any and all rights it may have (whether at law, equity, or otherwise) to object to the Commitment and the survey, and waives any and all rights it may have (whether at law, equity, or otherwise) to terminate this Contract regarding the Commitment or the survey. All those matters disclosed within or on the Commitment and the survey are the "Permitted Encumbrances."

6. **PROPERTY CONDITION:**

- A. SELLER MAKES NO REPRESENTATION, WARRANTY, STATEMENT, OR OTHER ASSERTION, EXPRESS OR IMPLIED, WITH RESPECT TO THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY TO BE CONVEYED, THEIR HABITABILITY, TENANT ABILITY OR SUITABILITY FOR COMMERCIAL PURPOSES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN AS CONTAINED HEREIN AND BUYER WILL ACKNOWLEDGE THE SAME AT THE CLOSING OF THE PURCHASE OF THE PROPERTY.
- B. BUYER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS CONVEYED "AS IS, WHERE IS" AND IN ITS PRESENT CONDITION WITH ALL FAULTS, AND THAT SELLER other than the special warranty of title made herein, HAVE NOT MADE AND DO NOT HEREBY MAKE ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE INCOME TO BE DERIVED THEREFROM, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, OR OTHERWISE WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE AND DOES MAKE ANY REPRESENTATIONS REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES (as hereinafter defined) ON, UNDER OR ABOUT THE

PROPERTY OR THE COMPLIANCE OR NONCOMPLIANCE OF THE PROPERTY WITH THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE SUPERFUND AMENDMENT AND AUTHORIZATION ACT, THE RESOURCE CONVERSION RECOVERY ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL ENVIRONMENTAL PESTICIDES ACT, THE CLEAN WATER ACT, THE CLEAN AIR ACT, ANY APPLICABLE STATE NATURAL RESOURCES CODE, WATER CODE, OR SOLID WASTE DISPOSAL ACT, THE HAZARDOUS SUBSTANCES SPILL PREVENTION AND CONTROL ACT, ANY SO CALLED FEDERAL, STATE OR LOCAL "SUPERFUND" OR "SUPERLIEN" STATUTE, OR ANY OTHER STATUTE, LAW, ORDINANCE, CODE, RULE, REGULATION, ORDER OR DECREE REGULATING, RELATING TO OR IMPOSING LIABILITY (INCLUDING STRICT LIABILITY), OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS SUBSTANCES (collectively, the "Hazardous Substance laws"). For purposes of this Assignment of Interests, the term "Hazardous Substances" shall mean and include those elements or compounds which are contained on the list of hazardous substances adopted by the United States Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency or under any Hazardous Substance laws.

C. BUYER is strongly advised to thoroughly inspect the Property, to obtain engineering inspections, surveys, termite inspections, and market and rental studies (collectively, the "Inspections") with respect to the Property. BUYER acknowledges that BUYER is relying solely on such Inspections, studies, reports and examinations in BUYER's determination of the condition of the Property. Buyer hereby acknowledges and stipulates that at the closing of the purchase of the Property that it has been given the opportunity to inspect the Property, said Purchaser will be relying solely on said Purchaser's own investigation and not on any information provided by Seller (except for Seller's warranty of title).

7. **BROKER(S) AND AUCTIONEER:** All obligations of the parties for payment of Auctioneer and Broker's fees are contained in a separate written agreement; however, the Title Company is authorized to disburse all funds payable to Auctioneer pursuant to that agreement from proceeds at closing.

8. **CLOSING:**

A. The closing of the sale will be on or before 5:00 PM on the fifth (5th) business day after the Court Order approving this agreement becomes final and non-appealable. The parties may by written agreement close this sale before or after this date, if closing is not stayed. If either Buyer or Seller fail to close by the above date, or another date agreed upon by the parties in writing, the non-defaulting party may exercise its rights as provided for in Paragraph 14.

B. Seller agrees to provide notice of any order by the Bankruptcy Court approving or rejecting the sale contemplated by this agreement within two (2) business days of receipt of same by sending a copy by email to _____.

C. At closing, Seller will execute and deliver, at Seller's expense, a special warranty deed (the "Deed"). If any part of the Sales Price is financed, then the deed will include a vendor's lien only if the lender requests the vendor's lien prior to the Closing Date. Seller will convey the Property at closing subject to the Permitted Encumbrances and any discrepancies, conflicts or shortages in area or boundary lines, or any encroachments or protrusions or any overlapping of improvements, and all other matters that a current survey or visual inspection of the Property would reveal; all easements, restrictions, conditions, outstanding oil, gas, and mineral interests,

including royalty interest; all other encumbrances to the extent the same are valid, enforceable and affect the Property; and all laws, rules, and regulations (including zoning ordinances) of applicable governmental authorities having or asserting jurisdiction over the Property.

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

1. Any notices, statements, certificates, affidavits, releases, and other documents required by this Contract or law necessary for the closing of the sale and issuance of the title policy.

E. At closing, Buyer will:

1. Pay the Sales Price in good funds acceptable to the Title Company;
2. Take the Property subject to all 2020 and subsequent years *ad valorem* tax liability therefore;
3. Deliver evidence that the person executing this Contract is legally capable and authorized to bind Buyer; and
4. Execute and deliver any notices, statements, certificates, or other documents required by this Contract or law necessary to close the sale.

9. **POSSESSION:** Seller will deliver possession of the Property to Buyer on funding of this sale in its present condition, subject to the terms set out herein. Until closing, Seller will operate the Property in the same manner as on the effective date. 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.

10. **SPECIAL PROVISIONS:**

This agreement is subject to Bankruptcy Court approval.

11. **SALES EXPENSES:**

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

1. Releases of existing liens, except those shown on the Title Commitment or assumed by Buyer, including prepayment penalties and recording fees, unless Seller is authorized by Order entered in the Bankruptcy Case to sell the Property free and clear of liens and claims; provided, however, even in such case, the Property will remain subject to 2020 *ad valorem* property taxes payment of which Buyer assumes in full;
2. Release of Seller's loan liability, if applicable;
3. Tax statements or certificates;
4. Preparation of the deed;
5. Costs to record any documents to cure title objections that Seller has elected to cure; and
6. 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 (for example, application fees, origination fees, discount fees, buy-down fees, commitment fees, appraisal fees, assumption fees, recording fees, tax service fees, mortgage title policy expenses, credit report fees, document preparation fees, interest expense that Buyer's lender requires Buyer to pay at closing, loan related inspection fees,

amortization schedule fees, courier fees, underwriting fees, wire transfer fees, and other fees required by Buyer's lender);

2. Preparation of any deed of trust; Recording fees for the deed and any deed of trust;
3. Premiums for flood insurance as may be required by Buyer's lender;
4. Any escrow fee;
5. Copy and delivery fees for delivery of the title commitment and related documents; and
6. Other expenses that Buyer will pay under other provisions of this contract.

12. **PRORATIONS:** There will be no pro ration of taxes due at closing. Seller is responsible for payment at closing of all *ad valorem* property taxes due on the Property for the tax year 2019 and prior. Buyer assumes payment in full of all 2020 and subsequent year *ad valorem* property taxes on the Property. This Paragraph survives closing.

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

- A. Terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money will be refunded to Buyer; or
- B. Appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
 1. Seller and the sales price will be reduced by the same amount; or
 2. Buyer and the sales price will not be reduced.

14. **DEFAULT:**

- A. If Buyer fails to comply with this Contract, Buyer is in default and Seller may, as its sole and exclusive remedy, terminate this contract and retain the earnest money.
- B. If Seller fails to comply with this Contract, Seller is in default and Buyer may, as its sole and exclusive remedy, terminate this Contract and receive back the earnest money.

15. **ATTORNEY'S FEES:** No party shall be entitled to attorney's fees in any legal proceeding brought under or in relation to this Contract or this transaction.

16. **NOTICES:** All notices between the parties under this Contract must be in writing and are effective when hand-delivered or mailed by certified mail return receipt requested to the recipient parties' addresses stated in Paragraph 1.

17. **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 may, with Bankruptcy Court approval, submit the dispute to mediation or as otherwise Ordered by the Bankruptcy Court.

18. **AGREEMENT OF THE PARTIES:**

- A. This agreement is subject to approval by the US Bankruptcy Court in Case No 19-36737, In re Pestova Holdings, LLC, US Bankruptcy Court Southern District of Texas, Houston Division (the Bankruptcy Court”).

- B. The parties understand that any title company closing this transaction may require a delay in closing until the Order of Bankruptcy Court approving this agreement becomes final and non-appealable.
- C. This Contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns.
- D. This Contract is not subject to Buyer obtaining financing, survey, inspections, due diligence or any other matter. Furthermore, if Buyer is in default, Buyer authorizes the Title Company to release the Deposit immediately upon Seller's written demand, without approval or consent from Buyer and vice versa. The defaulting party hereby releases the Title Company from any and all liability in connection with the release of Deposit.
- E. This Contract is to be construed in accordance with the laws of the United States Bankruptcy Code, Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure and, failing the applicability of the foregoing, the laws of the State of Texas. The parties hereby agree that any disputes regarding this agreement shall be subject to the exclusive jurisdiction of the US Bankruptcy Court in which the Bankruptcy Case is/was pending. All obligations of the parties created hereunder are performable in Harris County, Texas.
- F. All provisions of this Agreement, to the extent allowed by law, shall survive the closing of this transaction and shall not be deemed merged into the deed of the Property to BUYER or any other instrument executed in connection herewith. At Seller's option, the deed to the Property may incorporate the terms and conditions of this Paragraph, but the lack of such incorporation shall not limit, waive or impair the terms and conditions hereof in any manner.
- G. This Contract contains the entire agreement of the parties and may not be changed except in writing. In the event any covenant, condition or provision herein contained is held to be invalid by final judgment of any Court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any other covenant, condition or provision herein contained, which shall continue in full force and effect.
- H. If this Contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- I. Buyer may only assign this Contract if the bankruptcy court order approving this sale allows for such.
- J. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, and unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

19. **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. As used in this contract, the term "legal holiday" means any day other than Saturday or Sunday on which the Federal Reserve Bank of Dallas is closed.

20. **EFFECTIVE DATE:** The effective date of this Contract for the purpose of performance of all obligations is the date this contract is executed by Seller and Buyer.

21. **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. 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. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.
- C. Buyer shall not rely upon any oral or written representations about the Property from Seller.
- D. This signed Contract transmitted by fax or email shall be treated in all manner and respects as an original document and shall be considered to have the same binding legal effect as an original document.

22. **CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Buyer may:

- A. Terminate this Contract and the Earnest Money will be refunded to Buyer;
- B. Accept the Property in its damaged condition and accept an assignment of any insurance proceeds Seller is entitled to receive, if any.

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.

Buyer's Attorney:

Seller's Attorney:

Buyer:

By: _____ (signature)
_____ (printed name)
_____ of (capacity)

Date: _____

Seller:

Ronald J. Sommers, Chapter 7 Trustee of
the Bankruptcy Estate of Pestova Holdings, LLC
Case No. 19-36737, US Bankruptcy Court,
Southern District of Texas, Houston Division and
not in any individual capacity

Date: _____

Date: _____

SAMPLE

Exhibit "A"

LEGAL DESCRIPTION

Tract 1: 10444 Rosecroft Drive

Being 16.8869 acres, (735,592 square feet) of land being all of a called 16.916 acre tract of land described by deed to Ireland Limited Family partnership recorded under Harris County Clerk's File Number T278850 and all of Stonehenge Apartments, Section Two, a subdivision as shown on plat thereof recorded in Volume 214, Page 97 of the Harris County Map Records, located in the Thomas Tobin Survey, Abstract Number 774, Harris County, Texas, and more particularly described by metes and bounds as follows:

Beginning at a 5/8-inch iron rod with plastic cap stamped "Carter & Burgess" set at the Northeast corner of said 16.916 acre tract and said Stonehenge Apartments, Section Two, and the Southeast corner of a called 2.948 acre tract of land described by deed to Hughes Social Club, Inc., recorded under Harris County Clerk's File Number D003780 in the West right-of-way line of Webercrest Road (60-foot wide right-of-way) as established by instrument recorded in Volume 1024, Page 658 of the Harris County Deed Records and from which a 5/8-inch iron rod found bears North 78° 11' 50" West, a distance of 1.54 feet;

Thence, South 02° 16' 52" East, with the East line of said 16.916 acre tract and said Stonehenge Apartments, Section Two, and the West right-of-way line of said Webercrest Road, a distance of 531.62 feet, (called 541.36 feet) to a 5/8-inch iron rod with plastic cap stamped "Carter & Burgess" set for the Southeast corner of said 16.916 acre tract and said Stonehenge Apartments, Section Two, and the Northeast corner of a called 6.3218 acre tract of land described by deed to Lucille Barrett and husband, George T. Barrett;

Thence, South 88° 12' 59" West, with the Southerly line of said 16.916 acre tract and Stonehenge Apartments, Section Two and the North line of said 6.3218 acre tract, a distance of 941.37 feet, (called 941.22 feet) to a 5/8-inch iron rod with plastic cap stamped "Carter & Burgess" set for the Northwest corner of said 6.3218 acre tract;

Thence, South 02° 08' 59" East, with the Southerly line of said 16.916 acre tract and Stonehenge Apartments, Section Two and the West line of said 6.3218 acre tract, a distance of 291.97 feet, (called 292.24 feet) to a 5/8-inch iron rod with plastic cap stamped "Carter & Burgess" set for the Southwest corner of said 6.3218 acre tract in the North line of a called 20 acre tract of land described by deed to Bukowski Lynn Carothers recorded under Harris County Clerk's File Number E99870;

Thence, South 88° 13' 58" West, with the South line of said 16.916 acre tract and Stonehenge Apartments, Section Two and the North line of said 20 acre tract, at a

distance of 92.28 feet pass the most Southwesterly corner of said Stonehenge Apartments, Section Two in the North line of a called 50-foot wide Humble Pipeline easement line, described by instrument recorded in Volume 421, Page 295 of the Harris County Deed Records and continuing with said South line of said 16.916 acre tract and the North line of said 20 acre tract for a total distance of 365.46 feet, (called 354.99 feet) to a P.K. nail found at the Southwest corner of said 16.916 acre tract and the Southeast corner of a called 13.786 acre tract of land described by deed to NHDC Crestmont Village, LLC. recorded under Harris County Clerk's File Number W962289 and Stonehenge Apartments, Sec. One, a subdivision as shown on plat thereof recorded in Volume 189, Page 48 of the Harris County Clerk's File Number W962289;

Thence, North $02^{\circ} 01' 27''$ West, with the West line of said 16.916 acre tract and the East line of said 13.786 acre tract and said Stonehenge Apartments, Sec. One, a distance of 145.52 feet pass the most Westerly Southwest corner of said Stonehenge Apartments, Section Two in the North line of said 50-foot wide Humble Pipeline easement and continuing for a total distance of 772.70 feet (called 774.17 feet) to a 5/8-inch iron rod with plastic cap stamped "Carter & Burgess" set for the Northwest corner of said 16.916 acre tract and Stonehenge Apartments, Section Two and the most Northerly Southwest corner of said 13.786 acre tract and said Stonehenge Apartments, Sec. One and from which an iron fence corner bears South $44^{\circ} 29' 49''$ West, a distance of 0.82 feet;

Thence, South $74^{\circ} 22' 18''$ East, with the Northerly line of said 16.916 acre tract and Stonehenge Apartments, Section Two and with the Southerly line of said 13.786 acre tract and said Stonehenge Apartments, Sec. One, a distance of 210.57 feet to a 1/2-inch iron rod found at the most Easterly Southeast corner of said 13.786 acre tract and said Stonehenge Apartments, Sec. One and the Southwest corner of a called 6.921 acre tract and Crestmont Village Apartments, a subdivision as shown on plat thereof recorded in Volume 166, Page 28 of the Harris County Map Records and from which a P.K. nail found bears North 85 degrees 42 minutes 56 seconds West, a distance of 0.99 feet;

Thence, South $87^{\circ} 02' 04''$ East, with the North line of said 16.916 acre tract and said Stonehenge Apartments, Section Two and the South line of said 6.921 acre tract and said Crestmont Village Apartments, a distance of 399.67 feet, (called 400.58 feet) to a 5/8-inch iron rod with cap found for the Southeast corner of said 6.921 acre tract and Crestmont Village Apartments and from which a chain link fence corner bears North $53^{\circ} 20' 23''$ West, a distance of 2.32 feet;

Thence, North $02^{\circ} 24' 52''$ West, with the Northerly line of said 16.916 acre tract and said Stonehenge Apartments, Section Two and the East line of said 6.921 acre tract and said Crestmont Village Apartments, a distance of 160.11 feet to a 5/8-inch iron rod with plastic cap stamped "Carter & Burgess" set for the Southwest corner of said 2.948 acre tract;

Thence, North $89^{\circ} 39' 11''$ East, with the North line of said 16.916 acre tract and said Stonehenge Apartments, Section Two and the South line of said 2.948 acre tract, a distance of 485.63 feet, (called 484.89 feet) to a 5/8-inch iron rod with plastic cap stamped "Carter & Burgess" set for angle point;

Thence, North $88^{\circ} 29' 28''$ East, continuing with said common line, a distance of 220.66

feet, (called 220.01 feet) to the point of beginning and containing 16.8869 acres, (735,592 square feet) of land.