

Exhibit A

Cause No. 495484

ESTATE OF § IN THE PROBATE COURT
§
§
ERNEST L. HEIMLICH § NUMBER 1
§
§
DECEASED § HARRIS COUNTY, TEXAS

AMENDED MOTION TO VACATE AND/OR CLARIFY
ORDERS DATED APRIL 14, 2022

NOW COMES EDMUND HEIMLICH ("Heimlich") and files this Amended Motion to Vacate and/or Clarify two orders of the court dated April 14, 2022: (a) declaring Heimlich a vexatious litigant and requiring security for costs of \$50,000 and (b) Ordering Heimlich to pay security for costs of \$25,000 under Texas Estates Code Section 53.052. Heimlich seeks to vacate these orders because:

- (1) The vexatious litigant order, requiring security, was entered in Cause No. 495484 (probate of estate) while the Order granting security under the Texas Estates Code was entered in the trespass case, Cause No. 495484-401, purporting to dismiss claims in Cause No. 495484-402, Heimlich's breach of contract case
- (2) Heimlich's breach of contract claim is not frivolous or incapable of success at trial due to Cook's anticipatory breach and legal impossibility
- (3) The Court expressly stated that it was not addressing the merits of Edmund Heimlich's breach of contract claim until trial
- (4) The court's Orders stated a present intent to dismiss Heimlich's claims, but no subsequent order of dismissal was entered

(5) Texas Civil Practice and Remedies Code Chapter 11 (“vexatious litigant statute”) does not apply to attorneys, rendering the Order for \$50,000 in security for costs moot

For the foregoing reasons, Heimlich prays that the court vacate, set aside and/or clarify the April 14, 2022 Orders, finding that Heimlich’s claims for breach of contract, specific performance and quantum meruit remain pending and eliminating the mandates that Heimlich pay security for costs, whether under Texas Civil Practice and Remedies Code Section 11.054 or Texas Estates Code Section 53.052. In support of this motion, Heimlich alleges:

FACTUAL BACKGROUND

1. Edmund Heimlich filed an application for probate of the estate of his deceased father via *Cause No. 495484*, seeking appointment as temporary administrator. The Court appointed attorney David Cook to serve as dependent administrator instead.
2. Edmund Heimlich and David Cook, as administrator of the estate of Ernest Heimlich, deceased, entered into a real estate contract for the sale of 806 Comstock Springs Dr. Katy Texas on November 18, 2021. *See Exhibit A, contract for sale of 806 Comstock Springs Dr., Katy, Texas.*
3. Heimlich contracted with Cook to purchase the property for \$191,000 (*Exhibit A*) and assigned the contract to DII Fund for \$269, 500 (*Exhibit C*), with the

expectation of \$79,500 in profit from the brokered transaction. *See Exhibit A1, Cook/Heimlich contract and Exhibit A2, Heimlich/DII Fund assignment contract.*

4. The Contract provided 60 days for Heimlich to procure a buyer to assign the contract and if necessary, another 30 days extension in exchange for an increase in the purchase price of \$1000.00, which was paid and accepted. *Exhibit D, Transcript, page 23, lines 11-17. See Exhibit A1, Paragraph 9A of the contract, which states, “[t]he closing will be on or before January 19, 2022”, or “within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date)”. Paragraph 11 of Exhibit A1, titled “special provisions,” states “Seller agrees to give the buyer a 30-day extension to closing for a fee of \$1000, should that be needed.”*

5. This extended the time to close until February 19, 2022. Even to the extent that closing was only extended until February 17, 2022 as Cook contends, since closing was not court approved until February 22, 2022, the closing could not legally occur prior to receipt of the Court’s signed order approving the sale.

6. Mr. Cook acknowledged his understanding that Heimlich intended to flip the property for profit in the Contract for sale executed November 18, 2021 and during the oral hearing that occurred April 13, 2022. *Exhibit A1, Contract, and D, Transcript of oral hearing dated April 13, 2022, page 24, lines 11-24.* Both parties knew and intended for the Cook/Heimlich contract to be assigned to DII Fund when

Heimlich flipped the property, so access to the property was a material term provided for in Paragraph 7A of the Cook/Heimlich contract. Paragraph 7A states, **“Seller shall permit Buyer and Buyer’s agents access to the Property at reasonable times.” Exhibit A1.**

7. Cook repudiated the contract February 16-19, 2022, when he refused to close the transaction based on Heimlich’s failure to close on or before February 17, 2022. Even if the sale was required to close by February 17, 2022, as Cook contends, the failure of Cook to secure a court order approving the sale until February 22, 2022 mandated that the closing be extended until the signed Court order was obtained by the Parties. *See Exhibit C, court order approving sale 2/22/22. See Exhibit D, page 109, lines 1-8.*

8. Between February 16-19, 2022, David Cook emailed Heimlich and notified him that the contract would be canceled if closing did not occur by February 19, 2022—despite the fact that the parties had no legal authority to close until the Court signed the February 22, 2022 Order approving the sale. *See Exhibit B-1, email dated February 16, 2022, Exhibit B-2, email dated February 17, 2022, and Exhibit B-3, email dated February 18, 2022. See Exhibit C, 2/22/22 Order approving sale.*

9. The Texas Estates Code makes it David Cook’s responsibility to obtain court approval to sell real estate and this was not accomplished until February 22, 2022. *See Exhibit C, Court Order dated 2/22/22. The Parties had no legal authority to close*

the transaction until the Court signed the February 22, 2022 Order approving the sale.

10. While Mr. Heimlich and Mr. Cook were supposed to close the transaction on or before February 19, 2022, legal impossibility excused non-performance until February 22, 2022, when the Court signed the order approving the sale. It follows that Heimlich did not breach the contract, but Cook committed anticipatory breach.

11. Furthermore, the record reveals that Heimlich and his assign were prepared to close by February 22, 2022, and notified Cook of the same. *Exhibit D, page 23, lines 7-21.* For this reason, repudiation of the contract prior to that date constitutes anticipatory breach for which specific performance may issue.

12. Paragraph 15 of the contract, titled **DEFAULT**, expressly the right to specific performance: *“If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both.” Exhibit A1.*

13. Based upon Cook’s refusal to honor the contract and extend the closing, Heimlich filed suit for breach of contract / specific performance and unjust enrichment / quantum meruit in the District Court. The District Court action was transferred to probate court via *Cause No. 495484—402.*

14. Cook sued Heimlich for trespass in *Cause No. 495484-401.*

15. In the trespass case, David Cook filed MOTIONS to have Heimlich declared a vexatious litigant and for security for costs under Chapter 11 of the Texas Civil Practice and Remedies Code and Texas Estates Code Section 53.052.

16. On April 13, 2022, the Court held an oral hearing on Cook's motion to have Heimlich declared a vexatious litigant and for security for costs under Chapter 11 Texas civil Practice and Remedies Code and Cook's motion for security for costs under Section 53.052 of the Texas Estates Code. Tex. Civ. Prac. & Rem. Code Ch. 11, Tex. Est. Code 53.052.

17. Notably, the Court expressly stated that it was not delving into the merits of Heimlich's breach of contract or quantum meruit claims or David Cook's trespass action, both of which were reserved for a jury trial on the merits.

18. If Heimlich's claims were frivolous as Cook contends, a motion for summary judgment was the appropriate remedy, but not filed by Cook. Instead, Cook sought to block Heimlich from filing further pleadings by imposing security for costs and having his claims purportedly dismissed through security for costs orders signed April 14, 2022.

19.

20. On April 14, 2022, the Court issued two orders, (1) declaring Heimlich vexatious under Tex. Civ. Prac. & Rem. Code Chapter 11 and requiring \$50,000 in

security for costs and (2) requiring \$25,000 in security for costs under Tex. Est. Code 53.052. *See Exhibits E and F, April 14, 2022 Orders.*

21. The vexatious litigant order, requiring security, was entered in Cause No. 495484 (probate of estate) while the Order granting security under the Texas Estates Code was entered in the trespass case, Cause No. 495484-401, purporting to dismiss claims in Cause No. 495484-402, Heimlich's breach of contract case *Exhibits E and F. The defect of filing motions in the trespass case, having orders issued in the estate case and trespass case, purporting to dismiss claims filed in the tort action, Cause No. 495484-402—is clear and suggests that Heimlich's claims could not legally have been dismissed even for failure to comply. These orders were issued in the estate action, not in the tort case against Cook for breach of contract and quantum meruit.*

22. Notably, there is no further order actually dismissing Heimlich's claims and no orders were signed in Cause No. 495484-402—the only case in which Heimlich has asserted claims.

23. Furthermore, Section 11.002 provides that Chapter 11 does not apply to "an attorney licensed to practice law in this state unless the attorney proceeds pro se." Tex. Civ. Prac. & Rem. Code Sec. 11.002. For this reason and given that Heimlich is represented by counsel, it is unclear whether he is still required to pay \$50,000 in security under Chapter 11.002.

24. Also, whereas here, where there is evidence that Cook committed anticipatory breach, there is likewise no justification for the Court to continue to impose security for costs of \$25,000 against Heimlich to litigate his claims. The April 14, 2022 orders, requiring security for costs were premised upon Heimlich's claims being frivolous and him not being represented by an attorney, neither of which is true. Heimlich prays that the Court will clarify the effect of these orders, accordingly and vacate both orders, purporting to impose security for costs and dismiss Heimlich's claims for relief.

ARGUMENT AND AUTHORITIES

(1) The vexatious litigant order, requiring security, was entered in Cause No. 495484 (probate of estate) while the Order granting security under the Texas Estates Code was entered in the trespass case, Cause No. 495484-401, purporting to dismiss claims in Cause No. 495484-402, Heimlich's breach of contract case

25. First and foremost, the April 14, 2022 Orders issued in Cause No. 495484 and 495484-401, purport to dismiss claims pending in Cause No. 495484-402 for breach of contract and quantum meruit. Heimlich has never had any pending claims against the estate in Cause No. 495484 or 495484-401. Thus, the Orders do not effectively dispose of his claims in Cause No. 495484-402.

26. As the administrator is aware by virtue of his motion to transfer the district court claims for breach of contract and quantum meruit to probate court, those claims remain pending in Cause No. 495484-402. As such the April 14, 2022 Orders could

not possibly have dismissed Heimlich's claims when they were not issued in the right case. Heimlich requests clarification of this fact by this Honorable Judge.

(2) Heimlich's breach of contract claim is not frivolous or incapable of success at trial due to Cook's anticipatory breach and legal impossibility

27. The record reveals that Cook's motion to have Heimlich declared a vexatious litigant was granted based on Section 11.054 (2)(A) and/or (B); however, the court erred in determining that there was "not a reasonable probability that the plaintiff [would] prevail in the litigation against the defendant":

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. *A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:*

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or hearing; or

(C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) *after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:*

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.¹

28. The elements a of breach of contract claim are: "(1) a valid contract; (2) the plaintiff performed or tendered performance; (3) the defendant breached the contract; and (4) the plaintiff was damaged as a result of the breach." *Richter v. Wagner Oil Co.*, 90 S.W.3d 890, 898 (Tex. App.-San Antonio 2002, no pet.).

29. The Contract for sale was valid. Heimlich was clearly damaged by the failure of this sale to go forward. He lost the profit he would have made from flipping the property.

30. The issue for the Court's resolution is *who* breached the contract and legal impossibility.

31. There is no evidence that Heimlich breached the contract.

32. Heimlich notified Cook that he and DII funding were prepared to close by February 22, 2022 and was actively attempting to arrange the closing with Cook and the assignee.

33. Cook's refusal to close upon receipt of the signed Order, authorizing the sale to occur, constitutes an anticipatory breach / anticipatory repudiation. The doctrine of anticipatory breach is applicable where there is an unequivocal renunciation of

¹ Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 3, eff. September 1, 2013.

the contract by the defaulting party. *Universal Life & Accident Ins. Co. vs. Sanders*, 102 S.W.2d 405, 406 (Tex. Civ. App., opinion adopted, 1937, no pet). *Pollack vs. Pollack*, 39 S.W.2d 853, 855 (Tex. Civ. App., holdings approved, 1932, no pet), *Ulen Securities Co. vs. City of El Paso*, 59 S.W.2d 198, 199 (Tex. Civ. App.—El Paso 1933, writ ref.).

34. The party not in default will be justified in treating the contract as repudiated or abandoned where the other party to the agreement, by his conduct, clearly shows a fixed intention during nonperformance to repudiate the agreement and not comply with the contract's terms. *Kilgore vs. Northwest Texas Baptist Educational Ass'n*, 37 S.W. 598 (1896).

35. The Texas Estates Code requires that dependent administrators obtain court approval to sell real property belonging to an estate. *U.S. Bank v. Bentley*, No. 14-19-00324-CV, at *4-5 (Tex. App. Apr. 8, 2021) ("The legislature has created a statutory scheme governing estate administration proceedings to sell estate property and orders authorizing such sales. *In re Estate of Bendtsen*, 229 S.W.3d 845, 848 (Tex. App.—Dallas 2007, no pet.). See generally Tex. Est. Code §§ 356.001-356.655. Sections 356.251-.257 contain the process a dependent administrator must undertake to obtain an order to sell real property of the estate.

36. The dependent administrator must file an application for order of sale, *id.* § 356.251, with particular contents, *id.* § 356.252, and obtain citations to "all persons

interested" in the estate, *id.* § 356.253. The probate court "shall order the sale of the estate property" if the court is "satisfied that the sale is necessary or advisable." *Id.* § 356.256").

37. Once the dependent administrator has entered into a contract for sale, the dependent administrator then files a report of sale. *See id.* § 356.551. Five days after filing the report of sale, the trial court must inquire into the manner of the sale, hear evidence for or against the report, and determine the sufficiency or insufficiency of the administrator's bond, if any. *Id.* § 356.552. If the trial court determines that the sale is fair, proper, and in conformity with the law, the trial court shall confirm the sale and authorize the conveyance of the property upon the buyer's compliance with the terms of sale. *Id.* § 356.556. *U.S. Bank v. Bentley*, No. 14-19-00324-CV, at *5 (Tex. App. Apr. 8, 2021).

38. "The trial court's confirmation or disapproval of a report shall have the force and effect of a final judgment. *Id.* Any person interested in the estate or in the sale shall have the right to have such orders reviewed as in other final judgments in probate proceedings. *Id.* " *U.S. Bank v. Bentley*, No. 14-19-00324-CV, at *5 (Tex. App. Apr. 8, 2021)

39. It is undisputed that Cook did not obtain the order approving sale until February 22, 2022—after the date set for closing. It was Cook's responsibility to obtain the court order approving the sale. Since the closing could not legally occur

prior to February 22, 2022 and Cook repudiated the contract prior to this date, Cook's repudiation constitutes anticipatory breach for which Heimlich is entitled to specific performance.

40. "Specific performance is the remedy of requiring exact performance of a contract in the specific form in which it was made." *Levetz v. Sutton*, 404 S.W.3d 798, 805 (Tex. App.-Dallas 2013, pet. denied). A trial court may award the equitable remedy of specific performance upon a showing of breach of contract. *Stafford v. S. Vanity Mag., Inc.*, 231 S.W.3d 530, 535 (Tex. App.-Dallas 2007, pet. denied). "A party who seeks specific performance must plead and prove (1) compliance with the contract, including tender of performance, unless excused by the defendant's breach or repudiation and (2) the readiness, willingness, and ability to perform at relevant times." *Hogan v. Goldsmith*, 533 S.W.3d 921, 923-24 (Tex. App.-Eastland 2017, no pet.) (citing *DiGiuseppe v. Lawler*, 269 S.W.3d 588, 593-94, 601 (Tex. 2008)).

41. Alternatively, legal impossibility is a defense to a breach of contract claim. *Internacional Realty, Inc. v. 2005 RP West, Ltd.*, 449 S.W.3d 512, 527 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). It excuses performance on a contract when supervening circumstances, such as a governmental regulation or order, make performance impracticable or impossible. See *Centex Corp. v. Dalton*, 840 S.W.2d 952, 954 (Tex. 1992); *Walden v. Affiliated Comput. Servs., Inc.*, 97 S.W.3d 303,

325 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). *Venkatraman v. Masurekar*, No. 05-15-00792-CV, at *3-4 (Tex. App. Nov. 18, 2016).

42. Heimlich's ability to perform (close the transaction) was impaired by Cook's failure to obtain court approval until February 22, 2022, Heimlich was not in breach, had no obligation to pay for a further extension, and was entitled to the opportunity to close once the Court signed the 2/22/22 Order approving the sale.

43. Cook failed to introduce evidence showing that Heimlich was unable to close the sale on February 22, 2022 or at a reasonable time thereafter. *On pages 109-100 and 150-151 of the transcript*, Cook cites to hearsay only of his purported discussions with the assignee, DII Funding. Cook lists a litany of supposed reasons why the sale was not expected (by him) to close with DII Funding, but all of the recitations are hearsay not within a limited exception to the hearsay rule. As such, there is no evidence in the record to suggest that Heimlich was unable to close. Heimlich notified Cook otherwise. *See Exhibit D, pages 109-110, 150-151.*

44. As such, Heimlich's claims are clearly not frivolous, as required to justify the Order declaring him a vexatious litigant. Since this element of Section 11.054 was not met, the Court should be vacated, declaring Heimlich a vexatious litigant and imposing security for costs of \$50,000. For the same reason, the Court should vacate the order requiring \$25,000 in security for costs under Texas Estates Code Section 53.052.

(3) The Court expressly stated that it was not addressing the merits of Edmund Heimlich's breach of contract claim until trial

45. As stated above, Texas Civil Practice and Remedies Code mandates proof that Heimlich's claims were/are frivolous, which does not exist. Tex. Civ. Prac. & Rem. Code 11.054. Where a claim is valid on its face, it is not frivolous or incapable of prevailing at the time of trial, as in this case.

46. The Court repeatedly stated during the April 13, 2022 hearing that it was not considering the merits of the trespass case or Heimlich's breach of contract / quantum meruit claims. *See Exhibit D, pages 47, lines 15-25, page 56, lines 2-7, wherein the Court admonished Heimlich for getting into the merits of the breach of contract and trespass claims, page 66, lines 1-16, wherein the court states that it is not trying the trespass or breach of contract claims today.*

47. Where the Court is required to make a determination that Heimlich's claims are frivolous and the Court expressly stated that it was NOT addressing the merits of the trespass or breach of contract / quantum meruit claims, no determination could be made as to whether Heimlich's claims were valid until the jury determined the issues or summary judgment was had.

48. As such, there was no evidence to determine that Heimlich's claims were frivolous to impose security for costs under Section 11.054 of the Civil Practice and Remedies Code. The same rationale applies to security for costs under Section

53.052 of the Texas Estates Code. For this reason, both Orders issued April 14, 2022 should be vacated.

(4) The court's Orders stated a present intent to dismiss Heimlich's claims, but no subsequent order of dismissal was entered

49. In addition, the April 14, 2022 Orders mandating that Heimlich pay security for costs and purporting to effectuate dismissal of Heimlich's breach of contract and quantum meruit claims (in another case) if the security was not paid by April 28, 2022 stated only a "present intent" to dismiss at a future date—April 28, 2022. No subsequent order of dismissal has been signed in any case, but especially not in the case in which Heimlich's claims were filed. As such, Heimlich's claims have not been dismissed. Heimlich requests clarification of this issue by the Court and for the court to vacate these Orders, reinstating his claims to the extent the Court finds otherwise.

(5) Texas Civil Practice and Remedies Code Chapter 11 ("vexatious litigant statute") does not apply to attorneys, rendering the Order for \$50,000 in security for costs moot

50. Section 11.002 of the Texas Civil Practice and Remedies Code expressly provides that Chapter 11 does not apply where a party is represented by counsel. Heimlich was pro se at the time the vexatious litigant Order was entered, requiring a bond of \$50,000 be paid to continue to litigate. The statute is intended to prevent frivolous claims from being extensively litigated and driving up costs by a pro se

plaintiff. The same justification underlies the security for costs provision found in the Texas Estates Code.

51. Whereas currently, Heimlich is represented by counsel, who has demonstrated that his claims are not frivolous, but meritorious, there is no justification to impose security for costs for Heimlich to maintain his claims. This is especially so where the Court has entered an order authorizing the sale and Heimlich is ready to tender performance in accordance with the Contract's terms.

52. By virtue of the fact that Heimlich is simultaneously moving the court for specific performance of the contract, no additional costs or fees are anticipated if the court grants Heimlich's motion for specific performance. This eliminates the necessity and justification for security for costs to be assessed.

53. Since there is presently no justification to mandate security for costs by Heimlich, Mr. Heimlich prays that the Court will clarify and vacate both Orders issued April 14, 2022. Accordingly, Heimlich respectfully requests that the Court vacate both orders requiring security for costs that were issued April 14, 2022 and permit Heimlich to proceed on his motion for specific performance.

Respectfully submitted,

Candice Schwager
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**ATTORNEY FOR EDMUND
HEIMLICH**

CERTIFICATE OF SERVICE

I CANDICE SCHWAGER hereby certify that a true and correct copy of the foregoing motion was served on all counsel of record this 31st day of January, 2023.

Candice Schwager



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

NOTICE: Not For Use For Condominium Transactions



1. PARTIES: The parties to this contract are Robert L. Hennrich (Seller) and Edmund Heimlich and/or assigns (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: The land, improvements and accessories are collectively referred to as the Property (Property).

A. LAND: Lot 55 Block 24 Cimarron Sec 07
 Addition, City of Katy, County of Harris
 Texas, known as 806 Comstock Springs Dr, TX 77499-2227
 (address/zip code), or as described on attached exhibit.

B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property attached to the above described real property.

C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, security systems that are not fixtures, and controls for: (i) garage doors, (ii) entry gates, and (iii) other improvements and accessories. "Controls" includes Seller's transferable rights to the (i) software and applications used to access and control improvements or accessories, and (ii) hardware used solely to control improvements or accessories.

D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery or possession:

E. RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing \$ 190,000.00
 B. Sum of all financing described in the attached: Third Party Financing Addendum
 Loan Assumption Addendum, Seller Financing Addendum \$ 190,000.00
 C. Sales Price (Sum of A and B) \$ 190,000.00

4. LEASES: Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property. (Check all applicable boxes)

A. RESIDENTIAL LEASES: The Property is subject to one or more residential leases and the Addendum Regarding Residential Leases is attached to this contract.

B. FIXTURE LEASES: Fixtures on the Property are subject to one or more fixture leases (for example, solar panels, propane tanks, water softener, security system) and the Addendum Regarding Fixture Leases is attached to this contract.

C. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party.

(1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.

(2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within _____ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

Initiated for Identification by Buyer CH and Seller AC TREC NO. 20-16
 This form is authorized for use by Texas R. Turner, a subscriber of the Houston Deedprep Information Services, Inc. #101 TXR 1601

TRANSACTIONS

Contract Concerning 806 Comstock Springs Dr. Katy TX 77449 Page 2 of 11 11-08-2021
 (Address of Property)

5. EARNEST MONEY AND TERMINATION OPTION:

A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to Majestic Title, as escrow agent, at 24556 Kingland Blvd., Katy TX 77494 (address): \$ 1,900.00 as earnest money and \$ 0.00 as the Option Fee. The earnest money and Option Fee shall be made payable to escrow agent and may be paid separately or combined in a single payment.

(1) Buyer shall deliver additional earnest money of \$ _____ to escrow agent within _____ days after the Effective Date of this contract.

(2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(3) The amount(s) escrow agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.

(4) Buyer authorizes escrow agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases escrow agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.

B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and escrow agent shall release any Option Fee remaining with escrow agent to Seller; and (ii) any earnest money will be refunded to Buyer.

C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.

D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this paragraph 5.

E. TIME: Time is of the essence for this paragraph and strict compliance with the time for performance is required.

6. TITLE POLICY AND SURVEY:

A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by Majestic Title (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

(1) Restrictive covenants common to the platted subdivision in which the Property is located.

(2) The standard printed exception for standby fees, taxes and assessments.

(3) Liens created as part of the financing described in Paragraph 3.

(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.

(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.

(6) The standard printed exception as to mineral rights.

(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.

(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:

(i) will not be amended or deleted from the title policy; or

(ii) will be amended to read, "shortages in area" at the expense of Buyer Seller.

(9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.

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

Initiated for Identification by Buyer CGT and Seller AC

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TREC NO. 20-16

TXR 1601

Contract Concerning 506 Comstock Springs Dr. Katy, TX 77494-3311 Page 3 of 11 11-08-2021
(Address of Property)

C. SURVEY: Survey must be made by a professional land surveyor acceptable to the Seller Company and Buyer's lender. Seller shall furnish to Buyer and Buyer's lender a copy of the original survey or a copy of the survey as it exists on the date of the original survey or the date of the survey made by the surveyor acceptable to Buyer and Buyer's lender. The survey must be made within 15 days of the Closing Date. The survey must be made by a surveyor acceptable to Buyer and Buyer's lender. The survey must be made within 15 days of the Closing Date.

D. SURVEY: Within 15 days after the Closing Date, Buyer and Seller shall receive the survey on the date of Buyer's receipt of the date specified in this paragraph, whichever is later. Within 15 days after the date specified in this paragraph, whichever is later, Seller shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title disclosed on the survey other than items 5A(1) through (7) above, disclosed in the Commitment other than items 5A(1) through (9) above; or which prohibit the following use or activity: Residential use.

Buyer must object the earlier of (1) the Closing Date or (2) 7 days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object, except that the requirements in Schedule C of the Commitment are not waived by Buyer. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 3 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or Survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or Survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, Survey, or Exception Document(s) is delivered to Buyer.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under S5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 24 in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.

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

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

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services,

Contract Concerning 806 Comstock Springs Dr. Katy, TX ~~11-05-2021~~ Page 4 of 11 11-05-2021
 (Address of Property)

Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) **TIDE WATERS:** If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) **ANNEXATION:** If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code. The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing or purchase of the real property.

(7) **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.

(8) **TRANSFER FEES:** If the Property is subject to a private transfer fee obligation, §5.205, Property Code, requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

(9) **PROPANE GAS SYSTEM SERVICE AREA:** If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.

(10) **NOTICE OF WATER LEVEL FLUCTUATIONS:** If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

7. PROPERTY CONDITION:

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

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

(Check one box only.)

(1) Buyer has received the Notice.

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

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

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

Initiated for Identification by Buyer CH and Seller CH TREC NO. 20-16

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TRANSACTIONS
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Contract Concerning 805 Comstock Springs Dr, Katy, TX 77493-3511 Page 5 of 11 11-08-2021

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

(Check one box only)

(1) Buyer accepts the Property As Is.
 (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments:

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

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

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

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

H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$ 0.00. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.

B. BROKERS AND SALES AGENTS:

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent'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.

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

9. CLOSING:

A. The closing of the sale will be on or before 2022, or within 7 days after objections made under Paragraph 1D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

Initiated for Identification by Buyer (7)

and Seller (2)

TREC NO. 20-16

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Contract Concerning: 806 Comstock Springs Dr., Katy, TX 77494 Page 6 of 11 11-04-2021
(Address of Property)

10. POSSESSION:

A. BUYER'S POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted; ~~Upon closing and funding~~ according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.

B. SMART DEVICES: "Smart Device" means a device that connects to the Internet to enable remote use, monitoring, and management of: (i) the Property; (ii) items identified in any Non-Realty Items Addendum; or (iii) items in a Fixture Lease assigned to Buyer. At the time Seller delivers possession of the Property to Buyer, Seller shall:

- (1) deliver to Buyer written information containing all access codes, usernames, passwords, and applications Buyer will need to access, operate, manage, and control the Smart Devices; and
- (2) terminate and remove all access and connections to the improvements and accessories from any of Seller's personal devices including but not limited to phones and computers.

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

Seller agrees to give the buyer a 30 day extension to closing for a fee of \$1000 should that be needed.

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

- (1) **Expenses payable by Seller (Seller's Expenses):**
 - (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
 - (b) Seller shall also pay an amount not to exceed \$ 0.00 to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.
- (2) **Expenses payable by Buyer (Buyer's Expenses):** Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the

Initiated for identification by Buyer: GH

and Seller: IV

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RECORDED 11/04/2021

amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer; (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary; or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

17. ATTORNEY'S FEES: A Buyer, Seller, listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent. Escrow agent may require any disbursement made in connection with this contract to be conditioned on escrow agent's collection of good funds acceptable to escrow agent.

B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by escrow agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.

C. **Demand:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the

Initiated for identification by Buyer (EM) and Seller (EM) TREC NO. 20-16

Contract Concerning 806 Constock Springs Dr Katy TX 77450 Page 6 of 11 11-05-2011
 (Address of Property)

Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

All UV. 11-5-2011

To Buyer at: 6410 Rancho Blanco Court
 Houston TX 77083

To Seller at: 806 Constock Springs Dr
 Katy TX 77450-3223

Phone:

Phone:

E-mail/Fax: ed44@att.net

E-mail/Fax: dc606@CoastLaw PLLC.net

E-mail/Fax:

E-mail/Fax: 713-568-6571

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

- Third Party Financing Addendum
- Seller Financing Addendum
- Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- Buyer's Temporary Residential Lease
- Loan Assumption Addendum
- Addendum for Sale of Other Property by Buyer
- Addendum for Reservation of Oil, Gas and Other Minerals
- Addendum for "Back-Up" Contract
- Addendum for Coastal Area Property
- Addendum for Authorizing Hydrostatic Testing
- Addendum Concerning Right to Terminate Due to Lender's Appraisal
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum

- Seller's Temporary Residential Lease
- Short Sale Addendum
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- Addendum for Property in a Propane Gas System Service Area
- Addendum Regarding Residential Leases
- Addendum Regarding Fixture Leases
- Addendum containing Notice of Obligation to Pay Improvement District Assessment
- Other (list):

23. CONSULT AN ATTORNEY BEFORE SIGNING: TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is:

Seller's Attorney is:

N/A

Phone:

Phone:

Fax:

Fax:

E-mail:

E-mail:

Initiated for Identification by Buyer CH

and Seller CH

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TREC NO. 20-16

TXR 1601

TRANSACTIONS

CONTRACT FORMS

Contract Concerning 806 Comstock Springs Dr Katy TX 77494-3317 Page 9 of 11 11-09-2021
 (Address of Property)

EXECUTED the 20 day of November (Effective Date).
 (BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Form #20-16/2021 11/16/2021
 Buyer: Edmund Holmlund and/or assigns

Seller: Estate of Ernest L. Holmlund

Cook Law PLLC

David Orl, Deceased

Ernest L. Holmlund, Administrator

Subject to court approval

Buyer

Seller



The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transaction. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12185, Austin, TX 78711-2488, (512) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 20-16. This form replaces TREC NO. 20-15.

Contract Concerning 806 Comstock Springs DrKaty
(Address of Property)

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

| | | | |
|---|--|---|---|
| <u>exp Realty</u> | <u>603392</u> | <u>Listing Broker Firm</u> | <u>License No.</u> |
| <u>Other Broker Firm</u> | <u>License No.</u> | | |
| <u>represents</u> | <input checked="" type="checkbox"/> <u>Buyer only as Buyer's agent</u> | <u>represents</u> | <input type="checkbox"/> <u>Seller and Buyer as an Intermediary</u> |
| | <input type="checkbox"/> <u>Seller as Listing Broker's subagent</u> | | <input type="checkbox"/> <u>Seller only as Seller's agent</u> |
| <u>Tricia Turner</u> | <u>0425311</u> | <u>Listing Associate's Name</u> | <u>License No.</u> |
| <u>Associate's Name</u> | <u>License No.</u> | | |
| <u>the Tricia Turner Properties Group</u> | | | |
| <u>Team Name</u> | | <u>Team Name</u> | |
| <u>triciatricieturnerproperties.com</u> | <u>832-334-2671</u> | <u>Listing Associate's Email Address</u> | <u>Phone</u> |
| <u>Associate's Email Address</u> | <u>Phone</u> | | |
| <u>Licensed Supervisor of Associate</u> | <u>License No.</u> | <u>Licensed Supervisor of Listing Associate</u> | <u>License No.</u> |
| <u>8030 FM 359 S., Suite B</u> | <u>B32-334-2671</u> | <u>Listing Broker's Office Address</u> | <u>Phone</u> |
| <u>Other Broker's Address</u> | <u>Phone</u> | | |
| <u>Fulshear</u> | <u>TX 77441</u> | <u>City</u> | <u>State</u> |
| <u>City</u> | <u>State</u> | <u>City</u> | <u>State</u> |
| | | | |
| <u>Selling Associate's Name</u> | <u>License No.</u> | | |
| <u>Team Name</u> | | | |
| <u>Selling Associate's Email Address</u> | <u>Phone</u> | | |
| <u>Licensed Supervisor of Selling Associate</u> | <u>License No.</u> | | |
| <u>Selling Associate's Office Address</u> | | | |
| <u>City</u> | <u>State</u> | | |
| | | | |

Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee of \$1,000. This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.

Contract Concerning 806 Constance Springs Dr Katy TX 77494 Page 11 of 11 11-09-2011
(Address of Property)**OPTION FEE RECEIPT**Receipt of \$ 5 is acknowledged. (Option Fee) in the form of Escrow Agent Date **EARNEST MONEY RECEIPT**Receipt of \$ 5 is acknowledged. Earnest Money in the form of Escrow Agent Majestic Title Received by Email Address Date/Time
24556 Kingsland Blvd.
Address Phone
Katy TX 77494 Zip Fax
TX State **CONTRACT RECEIPT**

Receipt of the Contract is acknowledged.

Escrow Agent Received by Email Address Date
Address Phone
City State Zip Fax **ADDITIONAL EARNEST MONEY RECEIPT**Receipt of \$ 5 is acknowledged. Additional Earnest Money in the form of Escrow Agent Received by Email Address Date/Time
Address Phone
City State Zip Fax 

EXHIBIT A2

PURCHASE OF ASSIGNMENT OF PURCHASE & SALE CONTRACT

THIS ASSIGNMENT OF PURCHASE AGREEMENT (this "Assignment") is entered into by and between
D Fund II LLC ("Assignee"), and Edmund Heimlich ("Assignor").

Subject Real Property (the "Property") Legal Description:

Lot 55 BLK 24 Cimarron Section 7
306 Comstock Springs Dr, Katy, TX 77450

WHEREAS, Estate of Ernest L. Heimlich ("Seller"), and Edmund Heimlich and/or assigns, ("Buyer"), entered into a contract with the effective date of 11/24/2021 as amended, if applicable (herein after referred to as "Contract"), in which Seller agreed to sell and convey to Buyer the Property upon the terms and conditions, therein contained; and,

WHEREAS, in the contract the Buyer has the right to assign the Contract, Buyer shall henceforth be known as the Assignor; and,

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to obtain from Assignor all of the rights, title, and interest of Assignor created by the Contract; and the recitals set forth herein are true and correct.

NOW, THEREFORE, for and in consideration of the premises, recitals, mutual promises, covenants, obligations, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

AGREEMENT

1. Assignment. Assignor does hereby assign, transfer, set over and convey to Assignee, the successors, heirs and assigns, all of Assignor's rights, title and interest in and to the Contract and the Property described in the Contract, to have and to hold the same unto Assignee, the successors, heirs and assigns, forever, subject, however, to the terms and conditions contained in the Contract.

2. Deposit and Termination Option. For nominal consideration, the receipt of which is hereby acknowledged by Assignor, and Assignee's agreement to pay Assignor \$ 200 (Option Fee) within 3 days after the Effective Date of this contract, Assignor grants Assignee the Unrestricted exclusive right to terminate this contract by giving notice to Assignor within 5 days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where Property is located) by the date specified. If no dollar amount is stated as the Option Fee, then the amount shall read ONE and 00/100 DOLLAR (\$1.00). The Option Fee shall be refundable to Assignee upon exercise of the option; further, the Option Fee will be refunded to Assignee in the event Seller cannot deliver free and clear title to Assignee at closing. Further, immediately after the Effective Date, Assignor will deliver to Assignee all documents and information it has relating to the Contract, including, without limitation, the originally executed Contract. Time is NOT of the essence for this paragraph and strict compliance with the time for performance is NOT required.

Assignor's Initials

Assignee's Initials

PURCHASE OF ASSIGNMENT OF PURCHASE & SALE CONTRACT

3. **Representations and Warranties.** Assignee further represents, warrants to Assignor and agrees, as follows:

a. (i) Assignee has the full right and authority to enter into this Assignment and perform its obligations hereby and to accept the assignment of the Contract to Assignee; (ii) no consent or approval of any other party is required for the acceptance of Assignment by Assignor; (iii) Assignee understands that, except for the foregoing, Assignor has made no representations or warranties to Assignee and Assignor has no other obligations to Assignee other than as set forth in this Assignment; and, (iv) that no representations or warranties shall exist from Seller other than those specified in the Contract.

As of the Effective Date, Assignor assigns to Assignee all rights, title and interest in and to these documents. Assignee hereby acknowledges that Assignor has made and warrants or represents the truth, accuracy, and completeness of the Documents, and that Assignor has undertaken independent investigation as to the truth, accuracy or completeness of the Documents.

b. **Inspection.** Assignee hereby unconditionally retains all of its rights to inspect the Property.

c. **Earnest Money.** In the event Seller cannot convey free and clear title to Assignee through no fault of Assignee, excluding the Permitted Exceptions (as defined in the Contract) and provided Assignee is not in default of the Contract or this Assignment, then the Earnest Money shall be refunded to Buyer in accordance with the terms of the Contract.

The representations and warranties of this Section 3 shall survive the closing of the Property and the Assignment Closing.

4. **Ernest Money and Other Fees.** Assignor hereby assigns and transfers to Assignee all of Assignor's rights, title and interest in and to the Earnest Money deposit deposited by Assignor pursuant to the Contract. All other deposits, option fees, and other costs and expenses are also hereby assigned and transferred to Assignee.

5. **Assignment Fee.** Assignor shall receive from Assignee the sum of \$ 79,500 ("Assignment Fee") to be paid at the closing of the Contract, making the total purchase price \$ 269,500.00 ("Total Purchase Price"). The Assignment Fee shall be payable to Assignor, through the Title Company, in cash or other immediately available United States Federal funds at the Assignment Closing (defined below). In addition to paying Seller the Purchase Price for the Property as defined in the Contract, Upon consummation of the Assignment Closing and the Contract Closing, the Title Company shall disburse the Assignment Fee to Assignor.

6. **Assignment Closing.** The Assignment Closing of the transaction contemplated herein shall occur simultaneously with the closing of the Contract as defined therein (the "Contract Closing"), and in any event on or before the date of 2/17/2022 (the "Assignment Closing Date" or the "Assignment Closing") and shall take place simultaneously at the office of the Title Company as defined in the Contract, or at such other location agreed to between the parties hereto. On the Assignment Closing Date, Assignee shall deliver to Assignor the Assignment Fee. In the event a delay in the Assignment Closing is caused by Seller delaying the Contract Closing pursuant to a right under the terms of the Contract, whether or not such delay effects all or none of the Property, such delay shall not be deemed a default hereunder by Assignor but shall be deemed an extension of the Assignment Closing and Contract Closing. Assignor shall not modify the terms of the Contract or change the date of the Contract Closing without the prior written consent of Assignee. Assignor and Assignee acknowledge that the Assignment

Assignor's Initials

Assignee's Initials

PURCHASE OF ASSIGNMENT OF PURCHASE & SALE CONTRACT

Closing and Contract Closing date may change due to Seller's delay by no fault of Buyer; however, in no event does such date change constitute a default hereunder.

7. Obligation to Close. After the Effective Date, Assignee shall NOT be obligated to Assignor to close the purchase and sale transaction contemplated by the Contract, nor shall Assignee be obligated to perform all obligations of the buyer under the Contract in accordance with its terms; furthermore Assignee shall NOT be fully liable to Assignor for any such failure to close. In the event Assignee is unable to close solely because of inability to obtain financing or pay the purchase price at closing of the Contract and no default exists under the Contract, Assignee shall notify Assignor in writing of its inability to close within three (3) days of learning of its financial inability to close, but in no event less than ten (10) days prior to the Closing Date under the Contract. Assignor shall have the right to enforce its rights under this Assignment and shall have the right to recover its Assignment Fee in full from the Assignee as liquidated damages.

8. Court Costs and Attorneys Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Assignment, the prevailing party shall be entitled to recover costs of court and reasonable attorneys' fees from the other party or parties to such action, which fees may be set by the court in 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 that may be awarded. Each party acknowledges and agrees that the ascertainment of damages in the event of his breach of any provision of this Assignment would be difficult and, therefore, each party agrees that, in addition to all other remedies the party may have in law or in equity, each party shall have the right to injunctive relief if there is such a breach. If any action at law or in equity is necessary to enforce or interpret the terms of this Assignment, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which it may be entitled. If injunctive relief or specific performance is sought by either party to specifically enforce the provisions of this Assignment, any party against whom such action or proceeding is brought hereby waives the claim or defense in such action or proceeding that such party has an adequate remedy at law, and such party shall not urge in any such action or proceeding a claim or defense that such remedy at law exists.

9. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings given such terms in the Contract. Neither party hereto shall be permitted to assign this Assignment to another person or entity without the express written consent of the other party. This Assignment embodies the entire agreement between the parties hereto, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas. Venue hereunder shall be in the County where the property is located. This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective heirs, legal representatives, successors and assigns of any permitted Assignment. This Assignment may be executed in counterparts, any one of which will be deemed an original and all of which will constitute one and the same instrument. Facsimile or email scanned signatures will be effective as original signatures. Each party represents to the other that execution and delivery hereof has been properly authorized and that all signatures hereon are genuine. The signatories below acknowledge and agree that in the event there is any conflict between the terms of the Contract and this Assignment, this Assignment shall control.

0. Commissions: Josh DeShong Real Estate and Bayou City Co., LLC will split evenly 5% commission based off \$269,500.00 sales price paid by Assignor at time of closing and funding.

1. Survey: Seller & Assignor agree to allow the assignee adequate time to order and receive a survey for the property if no survey is provided by seller or assignor. Closing will automatically be extended if the survey is not received and receipted by the assignee by the closing date. Assignee to obtain new survey at assignee expense.

Assignor's Initials

Assignee's Initials

PURCHASE OF ASSIGNMENT OF PURCHASE & SALE CONTRACT

12: HOA Documents: Seller & Assignor agree to allow the assignee adequate time to order and receive the HOA resale certificate, bylaws, restrictions and covenants, rules & regulations. The assignee reserves the right to terminate the assignment if the HOA has restrictions.

13: Assignee's deposit of \$3,000 has been delivered and is held at title company. Assignee paid \$200 option to assignor.

14: Additional considerations: seller is responsible for all liens, past due and prorated property taxes and HOA dues. Seller will have house cleared of all personal belongings prior to closing. Assignor is responsible for paying off outstanding loan with M.P. Seago Enterprises, Inc. at time of closing. Assignor pays all of his expenses, at time of closing, out of his assignment fee of \$79,500.00.

IN WITNESS WHEREOF the parties hereto have executed this Assignment of Purchase Agreement on the date on which the latter of Assignor or Assignee executes this Assignment as shown below (the "Effective Date").

Assignee:

D. Fund II

By: John Prather

Its: Manager

Date of Signature:

Unquestioned

John Prather

2/13/2022

Assignor:

Manager

(Printed Name)

John Prather

Ed Heimlich

Title (If Applicable):

Unquestioned

Ed Heimlich

2/16/2022

Date of Signature:

Assignor's Initials

Assignee's Initials

EXHIBIT B-1

Comstock - No Second Extension Has Been Granted

From: David Cook (dcook@cooklawpllc.net)
To: ed44@att.net
Cc: jmak@cooklawpllc.net; ktank@majtx.com; mseago@consolidated.net
Date: Wednesday, February 16, 2022 at 03:16 PM CST

Ed,

I never saw an assignee contract as I had requested; consequently, I will not allow any extension to the current EMC between me, as Administrator of the estate, and you (or your assignees). By this email, I am informing the title company that if the closing does not occur timely (by end of day tomorrow), the EMC contract between me/the Estate (subject to court approval, and the court has not yet approved of this contract, but the way) will be terminated.

Ed, I will consider granting you an extension for up to two weeks if you (i) agree to vacate Rancho Blanco immediately, (ii) actually immediately vacate Rancho Blanco and agree to never re-enter the property and agree to a liquidated damages clause that would allow me to charge further attorneys' fees to be allocated against you for any further eviction, and (iii) agree to allow my attorneys' fees seeking to acquire your eviction of Rancho Blanco to be allocated against your share of the estate. My current attorneys' fees and expenses related to the eviction are \$3,250. I need to know if you will agree to these terms by tomorrow at 10 am, and in such an event, I will not grant an extension unless you sign a written agreement and actually vacate Rancho Blanco by the end of the day tomorrow.

David

David S. Cook
Cook Law, PLLC
211 W. 11th Street
Houston, Texas 77008
Phone: 713.568.6511
Fax: 713.574.2904
dcok@cooklawpllc.net

BOARD CERTIFIED IN ESTATE PLANNING AND PROBATE LAW BY THE TEXAS BOARD OF LEGAL SPECIALIZATION

CONFIDENTIALITY NOTICE: E-mail may contain confidential information that is legally protected. Do not read this e-mail if you are not the intended recipient. This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally protected. If you are not the intended recipient or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply e-mail.

Exhibit B-2

Re: Ready to Close on 806 Comstock Springs in Katy, Texas

From: David Cook (dcook@cooklawpllc.net)
To: ed44@att.net
Cc: msango@consolidated.net; kristie_seago@gmail.com; jmak@cooklawpllc.net; jkasischke@cooklawpllc.net
Date: Thursday, February 17, 2022 at 06:34 PM CST

All,

My contract terminated today. No closing documents were signed by you, Ed, nor submitted to me. The close did not occur. I offered Ed a contract extension under favorable terms. He did not accept the terms; therefore, our contract is invalid. I won't be available tomorrow. I'll be out of the office. Have a good weekend.

David

Sent from my iPhone.

On Feb 17, 2022, at 5:48 PM, ed.heimlich <ed44@att.net> wrote:

Michael & Kristie Seago,
with CC to the Law Firm of David Cook

Per my email early today to you and to Karen at the Title Company,

A Survey is not required for the Sale of Real Estate.

A Survey is typically required for financing the purchase of Real Estate.
I agreed to a \$13,500 reduction in price because this buyer is not financing the purchase.
I agreed to this to expedite the closing to meet the date set in the contract.

I am ready to close.

And,

I have done all that is required of me to close.

The Buyer signed a contract on February 7th that states in Paragraph 6(O)(2):

"Within 5 days after the Effective Date of this contract, Buyer shall obtain a new survey and Buyer's expense."

That gave the Buyer until February 12th to order, and pay, for the Survey.

NOTE ALSO: The sale of the property is NOT contingent upon a survey that is satisfactory.

Therefore, if the closing does not take place before the date agreed upon in the contract I have assigned the failure is not due to any negligence or breach of contract on my part.

I am ready to close.

And:

I have done all that is required of me to close.

But as stated earlier today I will agree to an extension if David Cook will agree to an extension to allow for the survey to be completed before closing.

HOWEVER; It appears David Cook may not be ready to close as he has yet to provide an Order proving he secures approval of the Ernest Money contract.

This is a matter beyond my control.

David Cook filed a "First Report of Sale of Real Property" in the case,

Cause No 495484,

on December 3, 2021

on a contract that was dated November 19 but not actually signed until some 4 days later due to repeated errors in the preparation of the contract by Tricia Turner's Assistant.

In that filing of record in the Court David Cook states in paragraph 4:

"The sale is in the best interest of the Estate and exceeds the appraised value and the sale price obtained by the Guardian in the Guardianship".

This is as true today as it was then.

The sale is in the best interest of the Estate.

The increase in the Bond the Judge required of David Cook indicates the Judge has approved the EM contract for the sale of 806 Comstock Springs.

However; it appears to me that David Cook needs to provide proof of this.

He needs to produce the Order.

His filings in the Court, including that of December 3rd, reference an "attached order".

But no such order was attached nor filed separately.

I know from experience with this Court that the Judge has instructed the Clerks to have the order filed separately.

I remain firm in my opinion the 'approval' can be found in the Letters of Administration.

That approval pre-dates the contract of record December 3, 2022.

But as David Cook included that statement under his signature, he should produce the order of approval before the date for which he has agreed to close.

That is; before February 19, 2022 (this Saturday).

As you know;

David previously said he would agree to up to a 2 week extension.

He stated his agreement to this without any condition other than producing a contract for my resale / assignment of the property.

Then at the last minute adds a demand unrelated to the property under contract.

As you know, it concerns another property owned by the Estate for the benefit of the beneficiaries, of which I am one.

is 6410 Rancho Blanco Court in Houston, Texas.

I believe my occupancy is legal.

According to David Cook that issue is now in litigation.

B-2

My occupancy is now a question for adjudication in whatever court it is now in.

That issue is immaterial and irrelevant to the sale of 806 Comstock Springs in Katy Texas. I'm certain that no Judge and no Jury would find David Cook's objection to my occupancy of another property, and refusal to agree to extension absent my vacating the property, is just cause for refusing to perform on the contract he entered into for a different property.

Micheal - Kristie, as Listing Agent, and I assume you as you have acted as her partner in this Listing, are entitled to a 5% commission for making this sale happen.

Therefore you should be between me and David Cook.

But you asked me to reach out to David Cook and so now I have.

I am ready to close.

And;

I have done all that is required of me to close.

It is now up to the Buyer / Assignee and David Cook, as Administrator with the Fiduciary Duty to liquidate the Real Properties of the Estate, to come to an agreement.

I expect the Listing and Buying Agents to facilitate this agreement to earn their \$14,000 in commissions.

Nothing more is required of me and there is nothing more I will do for the sale of 806 Comstock Springs in Katy Texas to

D Fund II, LLC by assignment of David Cook's sale of the property, as Administrator, of the Estate of Ernest L. Heimlich.

I see liability for both if they should fail to come to agreement.

Good Luck, Ed Heimlich

EXHIBIT C
NO. 495484

ESTATE OF

ERNEST L. HEIMLICH

DECEASED

IN THE PROBATE COURT NO. 2

OF

HARRIS COUNTY, TEXAS

Order Approving Sale of Real Property

ON THIS DAY the Court heard and considered the First Report of Sale of Real Property ("the Report") filed by David S. Cook, Dependent Administrator, and the Court finds that at least five (5) days have expired since the filing of the Report; that the current bond is sufficient and no additional bond is needed to protect the Estate and is in compliance with the Court's previous Order for Sale of Real Property and with the law; that the real property has been sold at a private sale for a fair and reasonable price; and that such sale was properly made and in conformity with the law. Such property is described as follows: 806 Comstock Springs Drive, Katy, TX 77450, more fully described as LT 55 BLK 24 CIMARRON SEC 7 in Harris County, Texas.

IT IS ORDERED and DECREED that the sale described in the Report is hereby APPROVED and conveyance of the property is authorized upon compliance by the Purchaser with the terms of sale, which sale is to be for cash.

Signed On 02/22/2022
4:22:29 PM


JUDGE PRESIDING

APPROVED AS TO FORM:

COOK LAW, PLLC

/s/ David S. Cook

David S. Cook
Texas Bar No. 00796391
211 W. 11th St.
Houston, Texas 77008
Phone: (713) 568-6520
Fax: (713) 574-2904
dcook@cooklawpllc.net

DEPENDENT ADMINISTRATOR

Automated Certificate of eService

This automated certificate of service was created by the efilng system. The filer served this document via email generated by the efilng 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.

Jerry Mak on behalf of Jerry Mak

Bar No. 12852010

jmak@cooklawpllc.net

Envelope ID: 59733841

Status as of 12/6/2021 2:45 PM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------------|-----------|-------------------------------|-----------------------|--------|
| Dominique Varner | | DVarner@hwa.com | 12/6/2021 11:25:46 AM | SENT |
| Gregory S. Lindley | | gslindleylaw@gmail.com | 12/6/2021 11:25:46 AM | SENT |
| Ann Board | | anneboard7@gmail.com | 12/6/2021 11:25:46 AM | SENT |
| Catherine Craig | | cathelmlitch@gmail.com | 12/6/2021 11:25:46 AM | SENT |
| Edmund BryanHeimlich | | ed44@att.net | 12/6/2021 11:25:46 AM | SENT |
| Anne MBoard | | arboard@msn.com | 12/6/2021 11:25:46 AM | SENT |
| Virginia Lanthman | | glanthman@gmail.com | 12/6/2021 11:25:46 AM | ERROR |
| Darcia Bland | | darcia.bland@gmail.com | 12/6/2021 11:25:46 AM | SENT |
| Suzi Kornblitt | | suzie@kornblittassociates.com | 12/6/2021 11:25:46 AM | SENT |
| Don Ford III | | dford@fordbeigner.com | 12/6/2021 11:25:46 AM | SENT |
| David Cook | | dcook@cooklawpllc.net | 12/6/2021 11:25:46 AM | SENT |
| Jerry Mak | | jmak@cooklawpllc.net | 12/6/2021 11:25:46 AM | SENT |

EXHIBIT D

1

REPORTER'S RECORD

2 TRIAL COURT CAUSE NO. 495484-401

3

4 IN THE ESTATE OF

5 IN THE PROBATE COURT

6 ERNEST D. HEIMLICH

7 NUMBER TWO (2) OF

8 DECEASED

9 HARRIS COUNTY, TEXAS

10

11

12

13 MOTION TO DISMISS AND VEXATIOUS LITIGANT HEARING

14

15

16

17 On the 13th day of April, 2022, the following
18 proceedings came on to be heard in the above-entitled
19 and numbered cause before the honorable Michael Newman,
20 Judge presiding, held in Houston, Harris County, Texas.

21 Proceedings reported by computer-aided
22 transcription/stenograph shorthand.

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APPEARANCES

MR. DAVID S. COOK
MS. JESSICA KASISCHKE
COOK LAW, PLLC
211 W. 11th Street
Houston, Texas 77008
PHONE: 713.568.6511

ATTORNEYS FOR PLAINTIFF, DEPENDENT ADMINISTRATOR

AND

MR. EDMOND HEIMLICH
PRO SE DEFENDANT

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(MOTION TO DISMISS AND VEXATIOUS LITIGANT HEARING)

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ADMINISTRATOR'S WITNESSES

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1 In addition, Ed is claiming for unjust
2 enrichment or quantum meruit. Ed Heimlich never had a
3 right to possession of Comstock property. When I took
4 possession of it, I told everybody I'm changing the
5 locks. I changed the locks. I made sure nobody would
6 go in it. Thereafter, I signed a contract with Ed
7 Heimlich. Part of our negotiations, he said, well, what
8 I want to do is, I would like to take possession before
9 we close. I said no, you can't do that. You have to
10 sell it first.

11 And he included Ed Heimlich and assigns in
12 the contract, which I agreed to because I believed he
13 was going to broker the property. Take it, turn around
14 and sell it for a profit to somebody else. I never gave
15 him the right to possess the property, never gave him
16 the right to access it, never gave him the right to list
17 it, to show it. And, in fact, what happened was he did
18 go in during this period of time --

19 Oh, and one other important fact is as part
20 of the original contract, Mr. Heimlich wanted to add an
21 addendum that it would grant him possession. I said no,
22 I'm not going to sign anything that gives you possession
23 because there's all kinds of problems that could arise
24 as part of that. And we had an email exchange and Ed
25 Heimlich said, David doesn't want possession. He wants

EXHIBIT G

NO. 495484-401

ESTATE OF ERNEST L. HEIMLICH IN THE PROBATE COURT
DECEASED NO. 3 OF HARRIS COUNTY, TEXAS

ORDER GRANTING SECURITY FOR COSTS

ON THIS DAY, the Court heard the motion
For Security of Costs filed by David S. Cook,
as Dependent Administrator of the Estate of
Ernest L. Heimlich, Deceased. After consideration
of the motion, the Response, and arguments of
counsel and Edward B. Heimlich, Pro Se, the
Court finds that the motion for Security for
Costs shall be GRANTED. It is therefore,

ORDERED, August 20, 2022, and DECREED that
pursuant to Texas Estate Code Section 53.052
Edward B. Heimlich, shall furnish security
for the benefit of David S. Cook, as Dependent
Administrator, by posting a surety bond
with the Harris County Probate Court Clerk in
the amount of \$15,000 ~~xx~~ by April 28,
2023 at 4:00 P.M. to be paid
to David S. Cook, as Dependent Administrator
for reasonable expenses, including the

NO. 495464-401 pa

Deponent Administrator's court costs
and attorney's fees.

SIGNED on this 14th day of April, 2020

Michael J. Kennedy

Honorable Michael J. Kennedy

Presiding Judge

Harris County Probate Court #3

EXHIBIT F

No. 495484

ESTATE OF
ERNEST L. HEIMLICH,
DECEASED

IN THE COUNTY COURT
OF
HARRIS COUNTY, TEXAS

ORDER DECLARING EDMUND B. HEIMLICH
A VEXATIOUS LITIGANT

On the day, came on to be heard the
Administrator's Motion to Declare Edmund B.
Heimlich a Vexatious Litigant (hereinafter
referred to as the "Motion") filed by Movant
David S. Cook as Dependent Administrator
of the Estate of Ernest L. Heimlich, Deceased.
After consideration of the motion, the responses
the testimony of witnesses, and the argument
of counsel and Edmund B. Heimlich, Pro se,
the Court is of the opinion and finds that
Movant's motion should be GRANTED. The
Court finds and declares Edmund B. Heimlich
is a vexatious litigant and, as such, it is

ORDERED, ADJUDGED, and DECREEED
that EDMUND B. HEIMLICH IS A
VEXATIOUS LITIGANT pursuant to
Chapter 11 of the Texas Civil Practice
and Remedies Code.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Edmund B. Heimlich shall furnish security for the benefit of the Movant, David S. Cook, as Dependent Administrator of the Estate of Ernest L. Heimlich, Deceased, by posting a surety bond with the Harris County Probate Clerk in the amount of \$50,00⁰⁰, on or before April 28, 2022, at 4:00 p.m. The security is to assure payment for the Movant's reasonable expenses, including the Movant's court costs and attorney fees. It is further

ORDERED, ADJUDGED, and DECREED that if EDMUND B. HEIMLICH does not furnish security in the amount and within the time limit set by this ORDER, the Court will dismiss all claims filed by EDMUND B. HEIMLICH in the above numbered and styled cause with prejudice against EDMUND B. HEIMLICH.

It is further, ORDERED, ADJUDGED,

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and DECREED that all claims filed by EDMUND B. HEIMLICH in the above numbered and styled cause are hereby abated until EDMUND B. HEIMLICH complies with this ORDER or until the matter is dismissed by further Order of this Court. It is further,

ORDERED, ADJUDGED and DECREED that EDMUND B. HEIMLICH shall not, as a pro se party, any sued litigant, in this Court or in any other Court in Texas against Thomas, David S. Cook, in any capacity, or his law firm, or his agents, directors, officers, employees, heirs, attorneys and/or representatives, without first obtaining written permission from the appropriate local administrative judge as required by Texas Civil Practice and Remedies Code Sections 11.101 and 11.102. It is further,

ORDERED, ADJUDGED, and DECREED that, as required by the TEXAS CIVIL

No. 495484

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PRACTICE and REMEDIES CODE Section
11.104, the court clerk shall provide
a copy of this Order to the Office
of Court Administration of the
Texas Judicial System.

Signed on this 12th day of April, 2022.



Honorable Michael J. Neuman
Presiding Judge
Harris County Probate Court #2