

11-30-17

Inst # 2017053697 Wed Dec 27 09:11:38 CST 2017  
Filing Fee: \$52.00  
Lancaster County, NE Assessor/Register of Deeds Office  
cpacks OPTION  
Pages 8



After recording return to:

Seacrest & Kalkowski, PC, LLO  
1128 Lincoln Mall, Suite 105  
Lincoln, NE 68508

**PUT OPTION**

This Put Option (“**Agreement**”) is made as of December 22, 2017 by and between Nicolas B. Castaneda and Brooke R. Castaneda and their successors and assigns (collectively “**Castaneda**”) and Commercial Club Enterprises, LLC, a Nebraska limited liability company, and its successors and assigns (collectively “**Enterprises**”). “**Party**” shall mean Castaneda or Enterprises individually and “**Parties**” shall mean Castaneda and Enterprises collectively.

1. Definitions. The following are defined terms. Other paragraphs of this Agreement contain numerous refinements, qualifications and/or exceptions; all other defined terms are as shown in other provisions of this Agreement or the Declaration of 200 & 216 N. 11th Street Condominium, dated as of December 26, 2017 and filed of record as Instrument Number 2017-053599 in the Lancaster County Register of Deeds Office, in Lincoln, Nebraska 68508, as may be amended (collectively “**Declaration**”). The Declaration is incorporated herein by this reference. The term “**Enterprise Condo Unit**” as used herein shall include (i) the definition of the Enterprise Condo Unit defined in Declaration and (ii) the F F & E. The term “**F F & E**” means the fixtures, trade fixtures, kitchen appliances, washer and dryer, bedroom mattresses, audio/video/television sets as specified by the hotel, and banquet dining tables and chairs stored within the third floor of the Enterprises Condo Unit, audio and video system then currently located within the Enterprise Condo Unit at the time the Enterprises Condo Unit exercises the Put Option described herein, but excluding any personal property that are placed or located within the Enterprises Condo Unit by the owner of the Enterprises Condo Unit between 2017 and the date the Owner of the Enterprises Condo Unit exercises the Put Option described herein, including art, chandeliers, furniture, antiques, object of special value fine reproductions or custom, hand-crafted items (“**Special Personal Property**”).

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2. Kindler Condo Unit Legal Description. The legal description of the Kindler Condo Unit is Unit N100, 200 & 216 N. 11th Street Condominium, a Nebraska condominium property regime, Lincoln, Lancaster County, Nebraska; according to the Declaration of 200 & 216 N. 11th Street Condominium, recorded December 26, 2017 as Inst. No. 2017 053599 in the records of Lancaster County, Nebraska, as may be amended from time to time. The 200 & 216 N. 11th Street Condominium is located upon the Lots 7 and 8, Block 36, Original City of Lincoln, Lancaster County, Nebraska.
  3. Enterprises Condo Unit Legal Description. The legal description of the Enterprises Condo Unit is Unit S300-~~400~~, 200 & 216 N. 11th Street Condominium, a Nebraska condominium property regime, Lincoln, Lancaster County, Nebraska; according to the Declaration of 200 & 216 N. 11th Street Condominium, recorded December 26, 2017 as Inst. No. 2017 053599 in the records of Lancaster County, Nebraska, as may be amended from time to time. The 200 & 216 N. 11th Street Condominium is located upon the Lots 7 and 8, Block 36, Original City of Lincoln, Lancaster County, Nebraska.
  4. Put Option Benefitting Enterprises Condo Unit. In the event that the Owner of the Enterprises Condo Unit should elect to transfer the Enterprises Condo Unit after the fifth anniversary of the date written above, then the Owner of the Enterprises Condo Unit shall have a one-time put option ("**Put Option**") to require Castaneda to purchase the Enterprises Condo Unit for the purchase price defined below. The Put Option will be effective on and after the fifth anniversary of the date written above and shall run with the Enterprises Condo Unit for the benefit of the Owner of the Enterprises Condo Unit and shall not be a personal covenant of Enterprises.
    - a. The Owner of the Enterprises Condo Unit shall first notify Castaneda in writing of its desire to obtain a current written MAI appraisal of the Enterprises Condo Unit (including the F F& E, but excluding the Special Personal Property) ("**MAI Appraisal**") to assist the Owner of the Enterprises Condo Unit in determining whether it elects to exercise its Put Option after seeing the MAI Appraisal. Within thirty (30) days of said Owner of the Enterprises Condo Unit's notice, the Parties shall jointly select a MAI appraiser to prepare a MAI Appraisal and each Party shall pay one-half (1/2) of the cost of the MAI Appraisal. If the parties do not object, then the fair market value of the jointly selected MAI Appraisal shall be the "**MAI Appraisal Value**". If the Parties fail to jointly select a MAI appraiser within (30) days of said Owner of the Enterprises Condo Unit's notice, then each Party shall separately select a MAI appraiser to prepare a MAI Appraisal within fifteen (15) days of the Parties failure to jointly select a MAI appraiser and each respective Party shall pay the entire cost of its selected MAI appraiser and the "**MAI Appraisal Value**" will then be the average of the fair market value of the two MAI appraisals. Any selected appraiser(s) shall

hold an MAI designation with over 10 years of experience appraising real estate projects in Lincoln, Nebraska, unless the parties agree otherwise in writing.

- b. After the Parties' final determination of the "MAI Appraisal Value", then the Owner of the Enterprises Condo Unit shall have thirty (30) days to exercise its Put Option for the MAI Appraisal Value by providing Castaneda written notice of the election.
- c. Any MAI Appraisal shall contain general conditions that are common in Lincoln, Nebraska MAI appraisals. A MAI Appraisal shall not contain (i) any extraordinary assumptions (assumptions which if found to be false could alter the resulting opinion or conclusion) nor (ii) contain hypothetical conditions (an assumption made contrary to fact, but which is assumed for the purpose of discussion, analysis, or formulation of opinions), without the prior written consent of the Parties.
- d. The Purchase Price of the Put Option ("**Put Option Purchase Price**") shall be the lesser of (i) one hundred and twenty percent of the MAI Appraisal Value or (ii) Three Million and No/100 Dollars (\$3,000,000.00), subject to standard closing prorations common in Lincoln, Nebraska.
- e. Castaneda shall have thirty (30) days after receipt of the Owner of the Enterprises Condo Unit's written notice to exercise the Put Option and agreement of the parties on the Put Option Purchase Price to then complete (i) any environmental testing, and inspection of the Enterprises Condo Unit to determine there are no violations of any applicable environmental laws or regulations and (ii) examination of title that shows marketable title and secure any title insurance commitments and endorsements (collectively "**Due Diligence Investigation**"). Otherwise, the Enterprises Condo Unit shall be conveyed "as is, where is". In the event the Due Diligence Investigation reveals a negative material matter(s) that was not assumed in the MAI Appraisal, then the Owner of the Enterprises Condo Unit and Castaneda shall use their best and reasonable efforts to negotiate a reduction of the Put Option Purchase Price to reflect the value of the negative material matter(s).
- f. Closing Date will be at Castaneda's election, but shall occur on or before ninety (90) days after receipt of the Owner of the Enterprises Condo Unit's written notice to exercise the Put Option and a copy of the MAI Appraisal.
- g. Possession of the Property shall occur upon the Closing of the Enterprises Condo Unit.
- h. The Owner of the Enterprises Condo Unit shall remove the Special Personal Property from the Enterprises Condo Unit on or prior to the Closing Date.

- i. The conveyance and transfer of the Enterprises Condo Unit at Closing shall be marketable fee simple title conveyed and transferred by a warranty deed, free and clear of all liens, assessments, taxes, tenants, but subject to (i) easements, conditions and restrictions of record, (ii) Declaration, (iii) Rights of Refusal dated this even date by and between Lincoln Commercial Club, LLC, a Nebraska limited liability company, and its successors and assigns (collectively “LCC”), Cas-Neb-neda, LLC, a Nebraska limited liability company, and its successors and assigns (collectively “CAS”) and Enterprises, as may be amended, (iv) Second Amendment and Restatement of Development Agreement dated this even date, by and between LCC, CAS and Enterprises, as may be amended, and (v) the Preservation Deed Restrictions stated in the Historic Preservation Features Restrictions, dated this even date, executed by Enterprises.
  - j. On the Closing Date, Enterprises rights, title and interests in the Operating Agreement, dated as of this even date, by and between CAS and Enterprises shall be assigned to Castaneda and a final accounting of Enterprises rights, title and interests in the Operating Agreement shall be completed and payments made within thirty days after the Closing Date.
5. Carryback Option. Castaneda shall have the right to fund the Put Option Purchase Price with a first lien loan from a third party. In the event the Put Option Purchase Price exceeds the appraised fair market value stated in the MAI Appraisal, then Castaneda shall have the option to require the owner of the Enterprises Condo Unit to carryback on the Closing Date a loan amount up to, but not exceed, the difference between the Put Option Purchase Price minus the appraised fair market value stated in the MAI Appraisal (“**Carryback Loan Amount**”). Castaneda shall have sixty (60) days after receipt of the Owner of the Enterprises Condo Unit’s written notice to exercise the Put Option to send notice to the Owner of the Enterprises Condo Unit that Castaneda is exercising its option to require the Owner of the Enterprises Condo Unit to carry back the Carryback Loan Amount as stated in said written notice. On or before the Closing Date, Castaneda will execute and deliver to the Owner of the Enterprises Condo Unit a promissory note in a form acceptable to the Owner of the Enterprises Condo Unit in the amount of the requested Carryback Loan Amount, amortized over ten (10) years at a fixed interest rate of nine percent (9%) and principal and interest payments due each and every anniversary date of the Closing Date for ten (10) years (“**Carryback Promissory Note**”). Said Carryback Promissory Note shall be secured by a deed of trust on the Enterprises Condo Unit in a recordable form, which deed of trust (“**Carryback Lien**”) shall (i) be subordinated to Castaneda’s lender’s actual first lien loan amount, up to the amount of the appraised fair market value stated in the MAI Appraisal, (ii) contain a due on sale clause in the event Castaneda sells the Enterprises Condo Unit prior to the maturity of the Carryback Promissory Note and (iii) be

cross defaulted with the first lien so that if there is a default under the first lien, that is not timely cured, then there is a default under the Carryback Lien.

6. Termination. This Agreement shall be in effect upon the date written above and shall terminate on termination of the Declaration.
7. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against any applicable Party because such Party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.
8. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained herein nor any acts of any Party shall be deemed or construed by a Party or by any third person to create the relationship of partnership or of joint venture or of any association, other than contractual relationships stated in this Agreement.
9. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns.
10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
11. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned Parties.
12. Further Assurances. Each undersigned Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, to effectuate the covenants and agreements herein provided. Each of the undersigned Parties shall cooperate with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.
13. Construction. Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

14. Controlling Documents. The Parties agree that in the event the terms of the Declaration and this Agreement are inconsistent, then the Declaration shall prevail.

15. Runs with the Land. This Agreement runs with the Enterprises Condo Unit.

Notices. All notices, demands, elections, or other communications that any Party to this Agreement may desire or be required to be given hereunder shall be deemed to have been given (i) if delivered by hand on the date of delivery or on the date that delivery was received by the addressee, or (ii) if delivered by email, certified mail or by overnight courier, on the date of delivery as established by the return receipt or courier service confirmation (or the date on which the return receipt or courier service confirms that acceptance of delivery was received by the addressee) to the addresses set forth below, or at such address as may be designated by the addressee upon written notice to the other party (herein called "**Notice**");


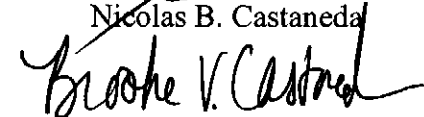
a. To Castaneda: Nicolas B. Castaneda and Brooke R. Castaneda  
8030 W. Emory Lane  
Peoria, AZ 85383  
nick777.castaneda@gmail.com

b. To Enterprises: Commercial Club Enterprises, LLC  
Attention: Donald Campbell  
Suite H, 1660 Tiburon Boulevard  
Tiburon CA 94920.  
Don@campbellsf.com

Rest of the document is left intentionally blank.

Executed as of the date written above by

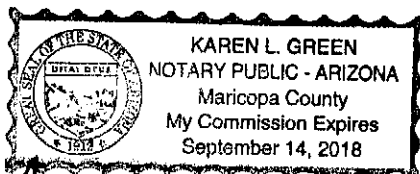
"Castaneda"

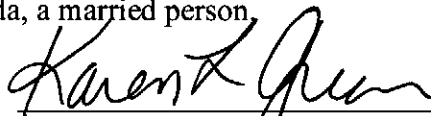
  
\_\_\_\_\_  
Nicolas B. Castaneda  
  
\_\_\_\_\_  
Brooke R. Castaneda

STATE OF Arizona )  
 ) ss.  
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December, 2017 by Nicolas B. Castaneda, a married person.

(Seal)

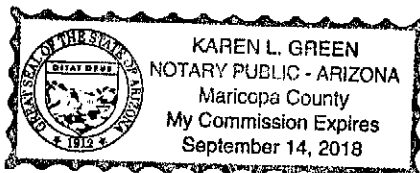


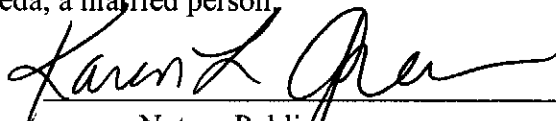
  
\_\_\_\_\_  
Notary Public

STATE OF Arizona )  
 ) ss.  
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December, 2017 by Brooke R. Castaneda, a married person.

(Seal)

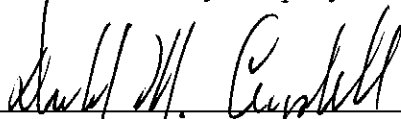


  
\_\_\_\_\_  
Notary Public

Executed by Enterprises as of the date written above.

"Enterprises"

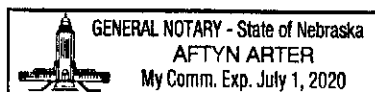
**Commercial Club Enterprises, LLC**, a  
Nebraska limited liability company

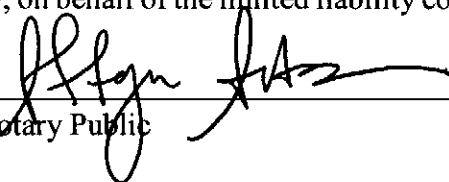
By:   
Donald Miller Campbell, Manager

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Lancaster )

The foregoing instrument was acknowledged before me this 18 day of  
December, 2017 by Donald Miller Campbell, Manager of Commercial Club  
Enterprises, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)



  
Notary Public