

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

GLASGOW EQUIPMENT SERVICE, INC.

Chapter 11

Debtor.

Case No. 18-11712-PGH

**EXPEDITED MOTION TO ASSUME SALES CONTRACT AND
TO SELL REAL PROPERTY FREE AND CLEAR VIA PRIVATE SALE**

**** Expedited Hearing Requested ****

Basis for Expedited Relief

The Debtor has a prepetition contract to sell its unencumbered commercial real property that must close by March 15, 2018, and the Debtor risks irreparable harm if it is not authorized by the Court to assume and close on such contract. Therefore, the Debtor requests that a hearing on this application be scheduled on or before March 7, 2018.

Local Rule 6004-1(B) Concise Statement:

a. Purchaser: Gary Thomas, who is not an insider of the Debtor, and who is unaffiliated with the Debtor or the Debtor's principal, Peter Ward;

b. Terms: Fee simple free and clear sale for \$475,000, with purchaser financing contingency, parties to each pay 3% of purchase price to their broker at closing, seller to have right to lease back real property for up to 30 days following closing for \$3,750; closing to occur on or before March 15, 2018;

c. Private Sale: Not subject to higher and better offers;

d. Additional Purchaser Protection: Not applicable;

e. Transfer of Personal Identifiable Information: Not applicable;

f. Lienholders: None; and

g. Necessity of Expedited Hearing: For the closing to occur on or before March 15, 2018, the Debtor requests the Court hear this Motion on or before March 7, 2018.

Glasgow Equipment Service, Inc. (the “**Debtor**”), by and through its undersigned counsel and pursuant to 11 U.S.C. §§ 363(b), 363(f), 365(a), Federal Rules of Bankruptcy Procedure 6004 and 6006, and Local Rule 6004-1, hereby requests: (a) approval of the Debtor’s assumption of its executory contract for the sale of its real property; (b) authorization for the Debtor to close on the sale of such real property; and (c) waiver of the 14-day stay of such an order. In support, the Debtor states as follows:

BACKGROUND

1. On February 14, 2018, the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “**Petition Date**”).

2. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is in possession of its assets and managing its affairs as a debtor in possession. As of the date hereof, no trustee, examiner, or statutory committee has been appointed in this Case.

3. The Debtor is in the business of the installation and service of petroleum station below ground equipment, generators, day tanks, and electronic fuel management systems, and provides environmental consultation, spill recovery, remediation, tank removal, and site restoration services.

4. The Debtor operates from the real property located at 1750 Hill Avenue, West Palm Beach, Florida 33407 (the “**Real Property**”), which the Debtor owns free and clear.

5. As set forth on the Debtor’s Schedule G, the Debtor is the party to a prepetition executory contract (the “**Contract**”) to sell the Real Property to Gary Thomas for \$475,000. A copy of the Contract is attached hereto as **Exhibit A**. Such contract includes a 30-day lease back provision which would permit the Debtor to lease back the real property for thirty days following the closing in exchange for \$3,750.

6. The Contract was entered into following an extensive marketing period wherein the Debtor listed the Real Property for sale in April 2017 through its brokers Robert Smith and Kirk Nelson of CBRE Group, Inc. The Contract states that the Debtor's broker shall receive 3% of the sale price, and that the purchaser's broker shall receive 3% of the sale price.

7. As set forth in Addendum to the Contract signed on January 29, 2018, the sale of the Real Property must close no later than March 15, 2018.

RELIEF REQUESTED

8. Through this Motion, the Debtor seeks authorization to assume the Contract and to close on the same, thereby selling the Real Property to Gary Thomas for \$475,000.

9. Courts adhere to the business judgment test to determine whether to approve a debtor in possession's assumption of an unexpired lease. Under this test, the assumption of an unexpired lease is appropriate if the debtor in possession can demonstrate that it will benefit the estate. *In re Chira*, 367 B.R. 888, 898 (S.D. Fla. 2007). Under the business judgment test, a court cannot substitute its judgment for a debtor's judgment. The business judgment test requires that a court follow the business judgment of the debtor unless that judgment is the product of bad faith, whim or caprice. *See Lubrizol Enterprises v. Richmond Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985).

10. The Debtor, in the sound exercise of its business judgment, has concluded that the Contract represents a valuable opportunity for it to sell its Real Property at a fair and reasonable price.

11. 11 U.S.C. § 363(b)(1) provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" Pursuant to Federal Rule of Bankruptcy Procedure 6004(f)(1), "[a]ll sales not in

the ordinary course of business may be by private sale or by public auction.” Courts have uniformly held that approval of a proposed sale under section 363(b) is appropriate if found to be in the sound business judgment of the trustee. *See, e.g., In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992). Such a sale should then be approved if the sale price is fair and reasonable, interested parties are provided with reasonable and adequate notice, and the purchaser is proceeding in good faith. *See In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992); *see In re Abbotts Dairies of Pennsylvania*, 788 F.2d 143, 147 (3d Cir. 1986). Pursuant to 11 U.S.C. § 363(f), the estate can sell property free and clear of all liens and encumbrances if one of several conditions is met.

12. To the best of the Debtor’s knowledge, there are no liens or encumbrances on the Real Property. To the extent any liens and encumbrances are discovered prior to closing, such liens and encumbrances will be paid from the sale proceeds. Moreover, the proposed purchaser, Gary Thomas, is not an insider of the Debtor and is unaffiliated with the Debtor or the Debtor’s principal, Peter Ward.

13. The Debtor submits that the proposed sale of the Real Property discussed herein is in the best interest of the estate and its creditors and will cause the estate to realize the highest value for the Real Property. Such sale will result in a price that is fair and reasonable after adequate and reasonable notice to parties in interest.

14. Therefore, the Debtor submits that the proposed sale constitutes the proper exercise of its sound business judgment and should be authorized. In addition, the Debtor requests that the Court waive the Federal Rule of Bankruptcy Procedure 6004(h) fourteen-day stay of any order authorizing the proposed sale.

WHEREFORE, the Debtor respectfully requests an order of the Court: (a) approving the Debtor's assumption of the Contract; (b) authorizing the Debtor to close on the sale of such real property set forth in the Contract and thereby sell the Real Property free and clear of all liens, claims, and encumbrances to Gary Thomas; and (c) waiving the Federal Rule of Bankruptcy Procedure 6004(h) fourteen-day stay of any order authorizing the proposed sale.

ATTORNEY CERTIFICATION

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via Notice of Electronic Filing to those parties registered to receive electronic notices in this case on February 28, 2018.

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EXHIBIT A

Commercial Contract

1* **1. PARTIES AND PROPERTY:** Gary Thomas, or related assigns ("Buyer")
 2* agrees to buy and Glasgow Equipment Service, Inc. ("Seller")
 3* agrees to sell the property described as: Street Address: 1750 Hill Avenue
 4* Mangonia Park, FL 33407-2237
 5* Legal Description: PC #: 44-43-43-05-16-000-0050; MANGONIA PARK IND COMPLEX LT 5
 6*
 7* and the following Personal Property: Any attached fixtures and equipment including shipping container
 8* and mobile home office.
 9* (all collectively referred to as the "Property") on the terms and conditions set forth below.

10* **2. PURCHASE PRICE:** \$ 475,000.00
 11* (a) Deposit held in escrow by Touchstone Webb Realty Company \$ 10,000.00
 12* ("Escrow Agent") (checks are subject to actual and final collection)
 13* Escrow Agent's address: 610 Clematis Street, #CU-5 West Palm Beach, FL 33401 Phone: (561) 659-5554
 14* (b) Additional deposit to be made to Escrow Agent within Par. 22 days after Effective Date \$ 42,500.00
 15* (c) Additional deposit to be made to Escrow Agent within _____ days after Effective Date \$ _____
 16* (d) Total financing (see Paragraph 5) \$ 380,000.00
 17* (e) Other _____ \$ _____
 18* (f) All deposits will be credited to the purchase price at closing. Balance to close, subject
 19* to adjustments and prorations, to be paid with locally drawn cashier's or official bank \$ 42,500.00
 20* check(s) or wire transfer.

21 **3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME:** Unless this offer is signed by Seller
 22* and Buyer and an executed copy delivered to all parties on or before November 21 2017, this offer will be
 23 withdrawn and the Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be 3
 24 days from the date the counter offer is delivered. **The "Effective Date" of this Contract is the date on which the**
 25 **last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer.**
 26 Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5
 27 days or less will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending
 28 on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next business day. **Time is of the**
 29 **essence in this Contract.**

4. CLOSING DATE AND LOCATION:

31* (a) **Closing Date:** This transaction will be closed on See Par. 22 (Closing Date), unless specifically
 32* extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including, but
 33* not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended on Closing
 34* Date and Buyer is unable to obtain property insurance, Buyer may postpone closing up to 5 days after the
 35* insurance underwriting suspension is lifted.
 36* Buyer ([Signature]) (_____) and Seller ([Signature]) (_____) acknowledge receipt of a copy of this page, which is Page 1 of 8 Pages.

(b) **Location:** Closing will take place in Palm Beach County, Florida. (If left blank, closing will take place in the county where the property is located.) Closing may be conducted by mail or electronic means.

5. THIRD PARTY FINANCING:

BUYER'S OBLIGATION: Within _____ days (5 days if left blank) after Effective Date, **Buyer** will apply for third party financing in an amount not to exceed 80.000 % of the purchase price or \$ _____, with a fixed interest rate not to exceed 4.500 % per year with an initial variable interest rate not to exceed 0.000 %, with points or commitment or loan fees not to exceed _____ % of the principal amount, for a term of 20 years, and amortized over 20 years, with additional terms as follows:

Buyer will timely provide any and all credit, employment, financial and other information reasonably required by any lender. **Buyer** will use good faith and reasonable diligence to (i) obtain Loan Approval within 30 days (45 days if left blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and (iii) close the loan. **Buyer** will keep **Seller** and Broker fully informed about loan application status and authorizes the mortgage broker and lender to disclose all such information to **Seller** and Broker. **Buyer** will notify **Seller** immediately upon obtaining financing or being rejected by a lender. **CANCELLATION:** If **Buyer**, after using good faith and reasonable diligence, fails to obtain Loan Approval by Loan Approval Date, **Buyer** may within _____ days (3 days if left blank) deliver written notice to **Seller** stating **Buyer** either waives this financing contingency or cancels this Contract. If **Buyer** does neither, then **Seller** may cancel this Contract by delivering written notice to **Buyer** at any time thereafter. Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by closing, of those conditions of Loan Approval related to the Property. **DEPOSIT(S) (for purposes of Paragraph 5 only):** If **Buyer** has used good faith and reasonable diligence but does not obtain Loan Approval by Loan Approval Date and thereafter either party elects to cancel this Contract as set forth above or the lender fails or refuses to close on or before the Closing Date without fault on **Buyer's** part, the Deposit(s) shall be returned to **Buyer**, whereupon both parties will be released from all further obligations under this Contract, except for obligations stated herein as surviving the termination of this Contract. If neither party elects to terminate this Contract as set forth above or **Buyer** fails to use good faith or reasonable diligence as set forth above, **Seller** will be entitled to retain the Deposit(s) if the transaction does not close.

6. TITLE: **Seller** has the legal capacity to and will convey marketable title to the Property by ☒ statutory warranty deed ☐ other _____, free of liens, easements and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) _____;

provided there exists at closing no violation of the foregoing and none of them prevents **Buyer's** intended use of the Property as Industrial Warehouse and Outside Storage.

(a) **Evidence of Title:** The party who pays the premium for the title insurance policy will select the closing agent and pay for the title search and closing services. **Seller** will, at (check one) ☒ **Seller's** ☐ **Buyer's** expense and within _____ days ☐ after Effective Date ☒ or at least 20 days before Closing Date deliver to **Buyer** (check one)

☒ (i.) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before Closing and, upon **Buyer** recording the deed, an owner's policy in the amount of the purchase price for fee simple title subject only to exceptions stated above. If **Buyer** is paying for the evidence of title and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.

☐ (ii.) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller** then (i.) above will be the evidence of title.

(b) **Title Examination:** **Buyer** will, within 15 days from receipt of the evidence of title deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (1) **Buyer** fails to deliver proper notice of defects or

Buyer (_____) (_____) and **Seller** (_____) (_____) acknowledge receipt of a copy of this page, which is Page 2 of 8 Pages.

(2) **Buyer** delivers proper written notice and **Seller** cures the defects within 15 days from receipt of the notice ("Curative Period"). If the defects are cured within the Curative Period, closing will occur within 10 days from receipt by **Buyer** of notice of such curing. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, **Buyer** will have 10 days from receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** (check applicable provisions below)

☒ (i.) **Seller** will, within 5 days from Effective Date, deliver to **Buyer** copies of prior surveys, plans, specifications, and engineering documents, if any, and the following documents relevant to this transaction:

All environmental reports including monitoring reports.

prepared for **Seller** or in **Seller's** possession, which show all currently existing structures. In the event this transaction does not close, all documents provided by **Seller** will be returned to **Seller** within 10 days from the date this Contract is terminated.

☒ **Buyer** will, at ☐ **Seller's** ☒ **Buyer's** expense and within the time period allowed to deliver and examine title evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals encroachments on the Property or that the improvements encroach on the lands of another, ☐ **Buyer** will accept the Property with existing encroachments ☒ such encroachments will constitute a title defect to be cured within the Curative Period.

(d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

7. PROPERTY CONDITION: **Seller** will deliver the Property to **Buyer** at the time agreed in its present "as is" condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition. **Seller** makes no warranties other than marketability of title. In the event that the condition of the Property has materially changed since the expiration of the Due Diligence Period, **Buyer** may elect to terminate the Contract and receive a refund of any and all deposits paid, plus interest, if applicable. By accepting the Property "as is", **Buyer** waives all claims against **Seller** for any defects in the Property. (Check (a) or (b))

☐ (a) **As Is:** **Buyer** has inspected the Property or waives any right to inspect and accepts the Property in its "as is" condition.

☒ (b) **Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within 15 days from Effective Date ("Due Diligence Period"), determine whether the Property is suitable, in **Buyer's** sole and absolute discretion, for **Buyer's** intended use and development of the Property as specified in Paragraph 6. During the Due Diligence Period, **Buyer** may conduct any tests, analyses, surveys and investigations ("Inspections") which **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that **Buyer** deems appropriate to determine the suitability of the Property for **Buyer's** intended use and development. **Buyer** will deliver written notice to **Seller** prior to the expiration of the Due Diligence Period of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property in its present "as is" condition. **Seller** grants to **Buyer**, its agents, contractors and assigns, the right to enter the Property at any time during the Due Diligence Period for the purpose of conducting Inspections; provided, however, that **Buyer**, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any person, arising from the conduct of any and all inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a mechanic's lien being filed against the Property without **Seller's** prior written consent. In the event this transaction does not close, (1) **Buyer** will repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and (2) **Buyer** will, at **Buyer's** expense release to **Seller** all reports and other work generated as a result of the Inspections. Should **Buyer** deliver timely notice that the Property is not acceptable, **Seller** agrees that **Buyer's** deposit will be immediately returned to **Buyer** and the Contract terminated.

(c) **Walk-through Inspection:** **Buyer** may, on the day prior to closing or any other time mutually agreeable to the

Buyer (*DT*) () and **Seller** (*PT*) () acknowledge receipt of a copy of this page, which is Page 3 of 8 Pages.

parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and to ensure that all Property is on the premises.

8. OPERATION OF PROPERTY DURING CONTRACT PERIOD: Seller will continue to operate the Property and any business conducted on the Property in the manner operated prior to Contract and will take no action that would adversely impact the Property, tenants, lenders or business, if any. Any changes, such as renting vacant space, that materially affect the Property or Buyer's intended use of the Property will be permitted ☒ only with Buyer's consent ☐ without Buyer's consent.

9. CLOSING PROCEDURE: Unless otherwise agreed or stated herein, closing procedure shall be in accordance with the norms where the Property is located.

(a) Possession and Occupancy: Seller will deliver possession and occupancy of the Property to Buyer at closing. Seller will provide keys, remote controls, and any security/access codes necessary to operate all locks, mailboxes, and security systems.

(b) Costs: Buyer will pay Buyer's attorneys' fees, taxes and recording fees on notes, mortgages and financing statements and recording fees for the deed. Seller will pay Seller's attorneys' fees, taxes on the deed and recording fees for documents needed to cure title defects. If Seller is obligated to discharge any encumbrance at or prior to closing and fails to do so, Buyer may use purchase proceeds to satisfy the encumbrances.

(c) Documents: Seller will provide the deed; bill of sale; mechanic's lien affidavit; originals of those assignable service and maintenance contracts that will be assumed by Buyer after the Closing Date and letters to each service contractor from Seller advising each of them of the sale of the Property and, if applicable, the transfer of its contract, and any assignable warranties or guarantees received or held by Seller from any manufacturer, contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium documents, if applicable; assignments of leases, updated rent roll; tenant and lender estoppels letters; tenant subordination, non-disturbance and attornment agreements (SNDAs) required by the Buyer or Buyer's lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the change in ownership/rental agent. If any tenant refuses to execute an estoppel letter, Seller will certify that information regarding the tenant's lease is correct. If Seller is an entity, Seller will deliver a resolution of its Board of Directors authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the requirements of local law. Seller will transfer security deposits to Buyer. Buyer will provide the closing statement, mortgages and notes, security agreements, and financing statements.

(d) Taxes and Prorations: Real estate taxes, personal property taxes on any tangible personal property, bond payments assumed by Buyer, interest, rents (based on actual collected rents), association dues, insurance premiums acceptable to Buyer, and operating expenses will be prorated through the day before closing. If the amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at request of either party, be readjusted upon receipt of current year's tax bill; this provision will survive closing.

(e) Special Assessment Liens: Certified, confirmed, and ratified special assessment liens as of the Closing Date will be paid by Seller. If a certified, confirmed, and ratified special assessment is payable in installments, Seller will pay all installments due and payable on or before the Closing Date, with any installment for any period extending beyond the Closing Date prorated, and Buyer will assume all installments that become due and payable after the Closing Date. Buyer will be responsible for all assessments of any kind which become due and owing after Closing Date, unless an improvement is substantially completed as of Closing Date. If an improvement is substantially completed as of the Closing Date but has not resulted in a lien before closing, Seller will pay the amount of the last estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and does not apply to condominium association special assessments.

(f) Foreign Investment in Real Property Tax Act (FIRPTA): If Seller is a "foreign person" as defined by FIRPTA, Seller and Buyer agree to comply with Section 1445 of the Internal Revenue Code. Seller and Buyer will complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or

Buyer (A) () and Seller (PW) () acknowledge receipt of a copy of this page, which is Page 4 of 8 Pages.

Social Security Numbers to the closing agent. If **Buyer** does not pay sufficient cash at closing to meet the withholding requirement, **Seller** will deliver to **Buyer** at closing the additional cash necessary to satisfy the requirement.

10. ESCROW AGENT: **Seller** and **Buyer** authorize Escrow Agent or Closing Agent (collectively "Agent") to receive, deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance with the terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option, (a) hold the escrowed items until the parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator determines the rights of the parties or (b) deposit the escrowed items with the clerk of the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the parties of such action, Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If Agent is a licensed real estate broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent interpleads the escrowed items or is made a party because of acting as Agent hereunder, Agent will recover reasonable attorney's fees and costs incurred, with these amounts to be paid from and out of the escrowed items and charged and awarded as court costs in favor of the prevailing party.

11. CURE PERIOD: Prior to any claim for default being made, a party will have an opportunity to cure any alleged default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-complying party specifying the non-compliance. The non-complying party will have _____ days (5 days if left blank) after delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

12. RETURN OF DEPOSIT: Unless otherwise specified in the Contract, in the event any condition of this Contract is not met and **Buyer** has timely given any required notice regarding the condition having not been met, **Buyer's** deposit will be returned in accordance with applicable Florida Laws and regulations.

13. DEFAULT:

(a) In the event the sale is not closed due to any default or failure on the part of **Seller** other than failure to make the title marketable after diligent effort, **Buyer** may either (1) receive a refund of **Buyer's** deposit(s) or (2) seek specific performance. If **Buyer** elects a deposit refund, **Seller** will be liable to Broker for the full amount of the brokerage fee.

(b) In the event the sale is not closed due to any default or failure on the part of **Buyer**, **Seller** may either (1) retain all deposit(s) paid or agreed to be paid by **Buyer** as agreed upon liquidated damages, consideration for the execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek specific performance. If **Seller** retains the deposit, **Seller** will pay the Brokers named in Paragraph 20 fifty percent of all forfeited deposits retained by **Seller** (to be split equally among the Brokers) up to the full amount of the brokerage fee. If **Buyer** fails to timely place a deposit as required by this Contract, **Seller** may either (1) terminate the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without waiving any remedy for **Buyer's** default.

14. ATTORNEY'S FEES AND COSTS: In any claim or controversy arising out of or relating to this Contract, the prevailing party, which for purposes of this provision will include **Buyer**, **Seller** and Broker, will be awarded reasonable attorneys' fees, costs, and expenses.

15. NOTICES: All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice, document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker) representing a party will be as effective as if given by or delivered to that party.

16. DISCLOSURES:

(a) **Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of commercial real estate for any commission earned by the broker under a brokerage agreement. The lien upon the owner's net

Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is Page 5 of 8 Pages.

proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not attach to any interest in real property. This lien right cannot be waived before the commission is earned.

(b) Special Assessment Liens Imposed by Public Body: The Property may be subject to unpaid special assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such liens, if any, shall be paid as set forth in Paragraph 9(e).

(c) Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

(d) Energy-Efficiency Rating Information: Buyer acknowledges receipt of the information brochure required by Section 553.996, Florida Statutes.

17. RISK OF LOSS:

(a) If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, Seller will bear the risk of loss and Buyer may cancel this Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of purchasing the Property at the agreed upon purchase price and Seller will credit the deductible, if any and transfer to Buyer at closing any insurance proceeds, or Seller's claim to any insurance proceeds payable for the damage. Seller will cooperate with and assist Buyer in collecting any such proceeds. Seller shall not settle any insurance claim for damage caused by casualty without the consent of the Buyer.

(b) If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the right of eminent domain, or proceedings for such taking will be pending or threatened, Buyer may cancel this Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of purchasing what is left of the Property at the agreed upon purchase price and Seller will transfer to the Buyer at closing the proceeds of any award, or Seller's claim to any award payable for the taking. Seller will cooperate with and assist Buyer in collecting any such award.

18. ASSIGNABILITY; PERSONS BOUND: This Contract may be assigned to a related entity, and otherwise ☒ is not assignable ☐ is assignable. If this Contract may be assigned, Buyer shall deliver a copy of the assignment agreement to the Seller at least 5 days prior to Closing. The terms "Buyer," "Seller" and "Broker" may be singular or plural. This Contract is binding upon Buyer, Seller and their heirs, personal representatives, successors and assigns (if assignment is permitted).

19. MISCELLANEOUS: The terms of this Contract constitute the entire agreement between Buyer and Seller. Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound. Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be construed under Florida law and will not be recorded in any public records.

20. BROKERS: Neither Seller nor Buyer has used the services of, or for any other reason owes compensation to, a licensed real estate Broker other than:

(a) Seller's Broker: CBRE Robert Smith / Kirk Nelson
(Company Name) (Licensee)

(Address, Telephone, Fax, E-mail)

who ☐ is a single agent ☒ is a transaction broker ☐ has no brokerage relationship and who will be compensated by ☒ Seller ☐ Buyer ☐ both parties pursuant to ☐ a listing agreement ☐ other (specify) Will be paid
three percent (3%) of the Purchase Price in case at Closing.

Buyer (AN) () and Seller (PN) () acknowledge receipt of a copy of this page, which is Page 6 of 8 Pages.

288* (b) Buyer's Broker: Touchstone Webb Realty Company Kris Hustad
 289 (Company Name) (Licensee)
 610 Clematis Street, West Palm Beach, FL KHustad@TouchstoneWebb
 290* 33401 (561) 659-5554 (561) 771-1155 .com
 291 (Address, Telephone, Fax, E-mail)

292* who ☐ is a single agent ☒ is a transaction broker ☐ has no brokerage relationship and who will be compensated
 293* by ☐ Seller's Broker ☒ Seller ☐ Buyer ☐ both parties pursuant to ☐ an MLS offer of compensation ☐ other (specify)
 294* Will be paid three percent (3%) of the Purchase Price in cash at Closing.

295 (collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to
 296 inquiries, introductions, consultations, and negotiations resulting in this transaction. Seller and Buyer agree to
 297 indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including
 298 reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is
 299 inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to
 300 Paragraph 10, (3) any duty accepted by Broker at the request of Seller or Buyer, which is beyond the scope of
 301 services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and
 302 expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of Seller or Buyer.

303 21. OPTIONAL CLAUSES: (Check if any of the following clauses are applicable and are attached as an addendum to
 304 this Contract):

305* ☐ Arbitration ☐ Seller Warranty ☐ Existing Mortgage
 306* ☐ Section 1031 Exchange ☐ Coastal Construction Control Line ☐ Buyer's Attorney Approval
 307* ☐ Property Inspection and Repair ☐ Flood Area Hazard Zone ☐ Seller's Attorney Approval
 308* ☐ Seller Representations ☐ Seller Financing ☐ Other _____

309 22. ADDITIONAL TERMS:

310* 1. Seller will deliver the property and building clean and free and clear of all
 311* debris. 2. At the end of the Due Diligence Period or extension thereof, Buyer will
 312* deposit an additional \$42,500 in Escrow if they elect to continue the with
 313* purchasing the property. 3. Closing will occur ON OR BEFORE THURSDAY, DECEMBER 21st, 2017.
 314* ~~Loan Commitment from the bank.~~ Simultaneously with the receipt of the loan
 315* commitment, the total deposit of \$52,500.00 will only be refunded to Buyer if
 316* Seller defaults on the sale of the property, or if there are Title issues as
 317* outlined in Paragraph 6 of the Contract.

318* SELLER SHALL HAVE THE RIGHT TO LEASE BACK THE PREMISES POST-CLOSING FOR UP TO 30 DAYS, AT A 30 DAY
 319* RENTAL AMOUNT OF \$3,750.00 GROSS (Includes all expenses other than utilities). IN THE EVENT OF HOLDOVER, RENT
 320* WILL INCREASE BY 175%.

321 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE
 322 ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL
 323 FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE
 324 PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE
 325 EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR
 326 REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER
 327 ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL
 328 REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER
 329 REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF
 330 THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS
 331 AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE
 332 AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.

333* Buyer ([Signature]) (_____) and Seller ([Signature]) (_____) acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

334 Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other
 335 party that such signatory has full power and authority to enter into and perform this Contract in accordance with its
 336 terms and each person executing this Contract and other documents on behalf of such party has been duly authorized
 337 to do so.

338* 
 339 (Signature of Buyer)

Date: 11/21/17

340* Gary Thomas, or related assigns
 341 (Typed or Printed Name of Buyer)

Tax ID No: _____

342* Title: CEO

Telephone: _____

343* _____
 344 (Signature of Buyer)

Date: _____

345* _____
 346 (Typed or Printed Name of Buyer)

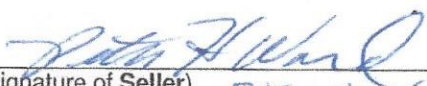
Tax ID No: _____

347* Title: _____

Telephone: _____

348* Buyer's Address for purpose of notice: _____

349* Facsimile: _____ E-mail: _____

350* 
 351 (Signature of Seller)

Date: _____

352* Glasgow Equipment Service, Inc
 353 (Typed or Printed Name of Seller)

Tax ID No: _____

354* Title: President

Telephone: _____

355* _____
 356 (Signature of Seller)

Date: _____

357* _____
 358 (Typed or Printed Name of Seller)

Tax ID No: _____


359* Title: _____

Telephone: _____

360* Seller's Address for purpose of notice: _____

361* Facsimile: _____ Email: _____

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362* Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.

Addendum to Contract

Addendum No. One to the Contract with the Effective Date of November 21, 2017 between
Glasgow Equipment Service, Inc (Seller)
and Gary Thomas, or related assigns (Buyer)
concerning the property described as: 1750 Hill Avenue, Mangonia Park, FL 33407-2237

(the "Contract"). Seller and Buyer make the following terms and conditions part of the Contract:

Seller and Buyer agree to extend the Financing Contingency until January 29, 2018 and in the event Buyer cannot obtain a Loan Commitment by that date, Buyer will be released from this Contract all paid deposits will be returned to Buyer.

Closing will be on or before February 9, 2018.

All other contingencies have been met.

All other terms and conditions in the Contract remain the same.

Buyer: _____ Date: _____
Gary Thomas, or related assigns
Buyer: _____ Date: _____
Seller: Peter H. Ward, President Date: 12/15/17
Glasgow Equipment Service, Inc
Seller: _____ Date: _____

Addendum to Contract

Addendum No. Two to the Contract with the Effective Date of November 21, 2017 between
Glasgow Equipment Service, Inc (Seller)
and Gary Thomas, or related assigns (Buyer)
concerning the property described as: 1750 Hill Avenue, Mangonia Park, FL 33407-2237

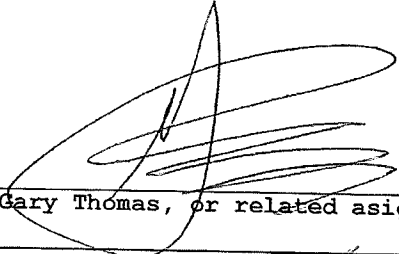
(the "Contract"). Seller and Buyer make the following terms and conditions part of the Contract:

Seller and Buyer agree all Loan Commitment contingencies have been met, with the exception of the Property appraising at no less than \$475,000.00 by no later than February 19, 2018. In the event the Property does not appraise at or above the Purchase Price, Buyer will be released from this Contract and all Deposits will be returned to the Buyer.

Closing is extended to on or before March 15, 2018.

All other contingencies have been met.

All other terms and conditions in the Contract remain the same.

Buyer:  _____
Gary Thomas, or related assigns

Date: 1/29/18

Buyer: _____

Date: _____

Seller:  _____
Glasgow Equipment Service, Inc

Date: 1/29/18

Seller: _____

Date: _____

ACSP-4 Rev 6/17

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Susan Thomas

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Gary Thomas - 1750