

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE: §
§
TWH LIMITED PARTNERSHIP, § **CASE NO. 17-50273-CAG**
§
DEBTOR § **CHAPTER 11**

**EXPEDITED APPLICATION TO APPROVE SALE OF REAL
PROPERTY FREE AND CLEAR OF LIENS, ENCUMBRANCES AND INTERESTS
(RE: the “Commercial Property”)**

TO THE HONORABLE CRAIG A. GARGOTTA, UNITED STATES BANKRUPTCY JUDGE:

Now comes TWH Limited Partnership, Debtor herein, by and through its counsel of record, who files this Application to Approve Sale of Real Property Free and Clear of Liens, Encumbrances and Interests (Re: the “Commercial Property”), and would show the Court the following:

1. This Motion is filed pursuant to 11 U.S.C. §363(b) & (f).

BACKGROUND

2. On February 5, 2017, TWH Limited Partnership (hereinafter referred to as the “Debtor” or “TWH”) filed a Voluntary Petition for Relief under Chapter 11 of Title 11, United States Code. Debtor continues in possession of its property and it is operating and managing its business as a debtor in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

3. TWH is a Limited Partnership organized under the laws of the State of Texas. TWH’s general partner is Howard Hu, Inc. The Debtor holds certain real property, generally described as follows:

A. Real property and improvements previously used for commercial purposes which is located at 25807 IH 45, Spring, Texas 77380; and

B. Residential real property and improvements located at 25810 Oak Ridge Dr., Spring, Texas 77380. The residential property is located directly behind the commercial property on a contiguous lot.

4. This is a single asset real estate bankruptcy as defined by 11 U.S.C. §101(51B). However, TWH is current on its payments owed to the secured lender holding a mortgage against the real property, is current with the payment of ad valorem taxes assessed against the real property and also maintains the required insurances for the properties.

5. The persons who own and control TWH and Howard Hu, Inc. live in and manage the real property from San Antonio, Texas. In December 2013, Howard Hu, Inc. acting as general partner of TWH, leased under a written commercial lease agreement the real property to certain entities known as 25807 TWH Ltd. and 25807 TWH GP, LLC (sometimes referred to below as “Tenants” or “25807 Entities”). Tenants are not related in any way to the Debtor (notwithstanding the names Tenants chose for their entities), and are owned and/or managed by individuals in the Houston area. TWH and Howard Hu, Inc. are collectively sometimes referred to below as “Landlord.” The written lease agreement between the parties contained a provision for the Tenants to purchase restaurant equipment in the premises and an option provision for the Tenants to purchase the real property and improvements from Landlord under certain conditions if Tenants were not in default under the lease and exercised the option. Tenants were represented by able counsel in the drafting, negotiation, and execution of the Lease. Tenants never exercised the purchase option, and defaulted under the lease by failing to pay rent when due.

6. Landlord (the Debtor) terminated the lease and evicted Tenants—i.e., Landlord commenced an action in JP Court to evict them. Landlord prevailed; the JP Court ordered the eviction of Tenants. Tenants appealed, and had a trial *de novo* with an evidentiary record in the

County Court at Law in Montgomery County. Tenants lost again. The County Court at Law signed a judgment ordering that Landlord is entitled to possession, and signed a writ of possession in favor of Landlord. Tenants appealed again, to the Ninth Court of Appeals in Beaumont, Texas, where they lost again.

7. After Tenants lost in the County Court at Law, they filed a lawsuit against the Debtor (the Landlord) on April 26, 2016, in the 284th Judicial District Court of Montgomery County, Texas, which was styled *25807 TWH LTD and 25807 TWH GP, LLC vs. THW Limited Partnership*, and assigned Cause No. 16-04-04940 (hereinafter referred to as the “Lawsuit”). In the Lawsuit, Tenants claimed that, despite the plain and unambiguous words of the written lease, they allegedly purchased and now own the leased premises even though they never paid for the premises. Tenants assert in the Lawsuit claims for trespass to try title, quieting title, fraud, fraudulent inducement, breach of contract, breach of fiduciary duty, conversion, specific performance, and constructive trust. The action is currently stayed by the automatic stay in effect in this case.

8. On March 7, 2017, TWH and Howard Hu, Inc. timely filed a Notice of Removal of the Lawsuit to the United States District Court for the Southern District of Texas and a motion to transfer the lawsuit to this Court as the matters pending therein are core matters in this bankruptcy case.

9. Debtor obtained buyers for both properties and filed an Application to Approve Sale of Real Property Free and Clear of Liens, Encumbrances and Interests (Doc. 23). On May 17, June 6, July 25-26, and August 8, 2017, the Court conducted extensive hearings on the Debtor’s Application to sell the above properties, along with several other related motions filed by the parties. Between the May and July hearing dates, the proposed buyer of the Commercial

Property decided not to extend the closing date. However, the proposed buyers for the Residential Property did agree to extend closing date under their contract.

10. On August 28, 2017, the Court gave extensive rulings on all parties' motions which were heard by the Court.

11. On August 31, 2017, the Court entered an Order Approving Sale of Real Property Free and Clear of Liens, Encumbrances and Interests, thereby approving the proposed sale of the Residential Property. (Doc. 78).

12. The Debtor's Court-approved broker, David Salazar, has continued to actively market the Commercial Property since the Debtor lost its previous buyer. Mr. Salazar has now found a very motivated buyer for the Commercial Property who is willing to pay \$2,000,000.00 cash for the property. The parties have executed a sales contract and the proposed buyer has deposited \$20,000.00 in earnest money with the title company.

13. The proposed sale is in the best interest of TWH's bankruptcy estate, and constitutes an exercise of reasonable, proper and sound business judgment. There is an immediate necessity for the sale to be closed. As noted previously, the Commercial Property is unoccupied, in deteriorating condition, and has remained vacant since the December, 2013, lease transaction with the Tenants. The Commercial Property has fallen into a state of great disrepair and has previously sustained damage which was related to a roof leak. Further, the Debtor is having to pay more than \$130,000.00 per year in debt service, property taxes, insurance and maintenance for the property which could not be sold or rented due to the Tenants unfounded litigation.

14. Because the sales contract calls for a cash purchase, the buyer wants to close as soon as possible. The contract calls only for a 10 days feasibility period, with a closing to occur

within 5 days thereafter, assuming the Court authorizes the Debtor to complete the sale. The buyer has indicated that time is of the essence and the Debtor does not want to risk losing another sale.

THE PROPERTY

15. The property owned by the Debtor which is the subject of this Application is as follows:

Real property and improvements located at 25807 IH 45, Spring, Texas 77380, and which is legally described in the detailed metes and bounds description attached hereto as Exhibit "A", and incorporated herein by reference. (hereinafter referred to as "the Property").

16. The Property was acquired in a conveyance to the Debtor in March of 2001.¹ The Debtor paid more than \$2 million for the Property and the adjoining residential property which the Court previously authorized the Debtor to sell. After the lease transaction with Tenants, the properties have remained vacant since December, 2013. Both properties have fallen into a state of disrepair. TWH has listed the properties for sale previously and, in fact, found multiple buyers for such properties. However, Tenants have taken actions to deter potential buyers including the filing of a lis pendens in the Montgomery County deed records and communications with buyers' brokers indicating that the properties would be tied up in litigation for a lengthy period of time. Although Tenants claim to be the owners of the properties, they are neither insuring the properties nor paying the ad valorem property taxes assessed against the properties.

17. The Property was listed in the Debtor's Schedules with a value of \$2,138,983.00. This valuation was based upon offers the Debtor's broker had received at the time the Schedules were filed. The Montgomery County Appraisal District values the Property at \$2,119,500.00;

¹ A smaller parcel which is only 3913 sq. ft. and is included as part of the Property was acquired in March, 2002.

however, this valuation does not take into account the deteriorating condition of the Property. The Debtor previously had the Property under contract in May, 2017, with a sales price of \$2,250,000.00; however, that sale fell through as noted above.

THE PROPOSED SALE

18. The Property has been marketed for many months but could not be sold for the reasons outlined above. After the loss of the prior buyer, Debtor's broker actively marketed the Property and has now secured a contract which is favorable to the Debtor's bankruptcy estate. The buyer has offered \$2,000,000.00 for the Property and paid \$20,000.00 in earnest money which has been deposited with the title company selected to close the potential sale. A true and correct copy of the Earnest Money Contract which forms the basis of the proposed sale is attached hereto as Exhibit "B".

19. The proposed buyer is not related in any way to the Debtor, its General Partner, or any of the owners of the Debtor. Upon information and belief, the proposed buyer operates and intends to operate some type of medical facility or an office related thereto in connection with the Property. The check for the earnest money is drawn on a bank account for an entity known as "Woodlands Specialty Hospital, PLLC". Neither the Debtor, its General Partner, nor any of the owners of the Debtor have any connection with this entity. The sale contemplated herein is an arms-length transaction, negotiated through the parties' brokers in good faith, and neither the Debtor nor its principals would retain any interest in the Property after the closing of the sale other than an interest in the sales proceeds.

20. In light of the valuation of the Property, its condition, the applicable real estate market and other offers, the Debtor, its General Partner, and its broker believe that the offer is well within the reasonable range of the price that could be obtained for the Property and, in fact,

is likely the best that can be obtained under the circumstances. TWH's owners and General Partner, in consultation with their broker and counsel, believe the sale contemplated herein is an exercise of reasonable, proper and sound business judgment. The sale proposed in this Application will ensure that the Debtor can successfully reorganize its debts and pay its creditors in full.

21. TWH requests that the Court provide in any order approving the sale that, because the buyer under the sales contract has acted in good faith, pursuant to Section 363(m) of the Bankruptcy Code, the reversal or modification of any order authorizing the sale on appeal will not affect the validity of the transfer of the Property to the respective purchaser (or assignees, if any) or any other transactions contemplated by the sales contracts and/or authorized by the order, unless the same is stayed pending appeal prior to closing under the sales contracts.

22. TWH would further show the Court that there is no just reason for delay in the implementation of any sale order and requests that the Court expressly direct entry of one or more orders approving the sale contemplated herein and providing that stay of Federal Rules of Bankruptcy Procedure Rules 6004(g) and 6006(d) be waived, modified and not applicable to the sale of the Property. Further, TWH requests that the Court authorize it and its General Partner, Howard Hu, Inc. to take all actions and enter into all transactions authorized by the Court's Order immediately.

**LIENS AND ENCUMBRANCES AGAINST
AND DISPUTED "INTERESTS" IN THE PROPERTY**

23. The following liens exist against the Property:

A. Montgomery County Tax Assessor-Collector – This entity collects all ad valorem property taxes assessed against the Property. These taxes are current at the present time, as the Debtor paid them in full (more than \$53,000) and in a timely manner on January 31, 2017.

Therefore, the only taxes that may be due this entity would be pro-rated 2017 ad valorem taxes due at closing. TWH proposes that all taxes due and owing to this entity and assessed against the Property at the time of closing be paid directly by the title company closing the sale.

B. Commerce National Bank (“CNB”) is the Debtor-in-possession’s secured lender. CNB holds a perfected first lien Deed of Trust against the Property, securing a note in the amount of \$743,000.00. TWH estimates that the balance due on this note was \$634,996.35 as of the petition date. The Debtor was current of the monthly mortgage payments to CNB pre-petition, because of loans or contributions to the Debtor by its owners or by an entity owned by TWH’s owners. TWH intends to keep the CNB loan current post-petition until the commercial property sells; however, this imposes a hardship on the Debtor as it has no income and can only make the payments by borrowing from its owners. Debtor proposes that all sums due and owing to CNB be paid directly by the title company closing the sale of the Property, including attorney’s fees and expenses which have been incurred by CNB in connection with this case.

C. As noted above, 25807 TWH LTD and 25807 TWH GP, LLC (the former Tenant of the properties and its General Partner) have taken the position that they are the “owners” of the Property. Tenants did not pay for the Property and are not in the chain of title, nor have Tenants ever been a party to a deed or conveyance of the Property. Instead, Tenants breached the lease and have sued TWH (their former landlord) claiming the lease was really a purchase. The claim lacks merit and is brought in an effort to tie up the Property and cause the Debtor to incur hundreds of thousands of dollars in unnecessary costs in an effort to “motivate” the Debtor to settle. Tenants have no interest in the Property, and the sale should therefore go forward pursuant to 11 U.S.C. §363(b). In the alternative, because Tenants actually claim an “interest”

in the Property, the Court can and should authorize the sale of the Property free and clear of such purported interest under 11 U.S.C. §363(f), as such interest is in bona fide dispute.

PROPOSED DISTRIBUTION OF PROCEEDS

24. It is not clear at the present time what the exact amount of proceeds would be from the proposed sale, however a general estimate would be in excess of \$1.2 million. Debtor believes that the proceeds will be sufficient to pay all creditors holding allowed claims in this case in full. Both the TWH Entities and another entity believed to be controlled by the TWH Entities' principals have filed significantly large claims in this case. The Debtor disputes such claims in full and will be filing an objection to both claims. TWH therefore requests that the Court direct all of the remaining proceeds be paid by the title company closing the sales into the registry of Court, where the funds would be held pending further order of the Court.

RELIEF REQUESTED

25. Pursuant to 11 U.S.C. §363(b), the Debtor is authorized to sell property of the estate, other than in the ordinary course of business, after notice and hearing. Pursuant to 11 U.S.C. §363(f), the Debtor may sell property "free and clear of any interest in such property of an entity other than the estate" if, among other provisions, "such interest is in bona fide dispute".

26. Under the facts stated herein, the purported "interest" of the Tenants is clearly in bona fide dispute. In fact, Tenants' claims in the Lawsuit include seeking a finding that Tenants are the owners of the Property. Debtor therefore requests that the Court approve the sale specified in the Contract attached hereto as Exhibits "B", and that such sale be free and clear of any liens, encumbrances and interests, with the provision that any liens would attach to the sales proceeds in the order of priority. TWH further requests that the Court provide in any order

entered in connection herewith a provision allowing the Debtor-in-possession to convey title to the property by and through its General Partner, Howard Hu, Inc.

WHEREFORE, PREMISES CONSIDERED, the TWH prays that the Court enter an order permitting the Debtor to sell the above-referenced Property and authorizing the Debtor to convey title to the Property free and clear of any liens, encumbrances and interests as provided herein, and for such other and further relief to which the Debtor may be justly entitled.

Respectfully submitted,

LAW OFFICE H. ANTHONY HERVOL
4414 Centerview Drive, Suite 200
San Antonio, Texas 78228
(210) 522-9500
(210) 522-0205 (Fax)

By: /s/ H. Anthony Hervol
H. Anthony Hervol
State Bar No. 00784264
Attorney for Debtor-in-possession

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing Application has been served upon the parties listed below by the methods indicated hereunder, and to the parties on the attached mailing list (unless such parties are also listed on this Certificate), by United States Mail, First Class Delivery, postage prepaid, on this 28th day of September, 2017.

DEBTOR:

TWH Limited Partnership
10 Inwood Point
San Antonio, Texas 78248
Via Electronic Mail, with consent

Howard Hu, Inc.
10 Inwood Point
San Antonio, TX 78204
Via Electronic Mail, with consent

**LIENHOLDERS OR OTHER
INTERESTED PARTIES:**

John P. Dillman
Linebarger Goggan Blair & Sampson
P.O. Box 3064
Houston, TX 77253
Via First Class Mail, postage prepaid
Attorney for the Montgomery County Tax Assessor-Collector

Montgomery County Tax Assessor-Collector
400 N. San Jacinto St.
Conroe, TX 77301
Via First Class Mail, postage prepaid

Lisa C. Fancher
Fritz, Byrne, Head & Gilstrap, PLLC
221 West Sixth Street, Suite 960
Austin, TX 78701
Attorney for Commerce National Bank
Via the Court's ECF Filing System

25807 TWH LTD and 25807 TWH GP, LLC
P.O. Box 27460
Houston, TX 77227
Via First Class Mail, postage prepaid
(sent to the address for the entities shown on recently filed Proof of Claim)

25807 TWH LTD and 25807 TWH GP, LLC
1314 Texas Ave., Suite 300
Houston, TX 77002
Via First Class Mail, postage prepaid

UNITED STATES TRUSTEE:

Post Office Box 1539
San Antonio, Texas 78295-1539
Via the Court's ECF Filing System

 /s/ H. Anthony Hervol _____
H. Anthony Hervol

Label Matrix for local noticing
0542-5
Case 17-50273-cag
Western District of Texas
San Antonio
Thu Sep 28 10:38:46 CDT 2017

TWH Limited Partnership
13
10 Inwood Point
San Antonio, TX 78248-1646

25807 TWH LTD and 25807 TWH GP, LLC
1314 Texas Ave., Suite 300
Houston, TX 77002-3518

25807 TWH LTD. AND 25807 GP. LLC
p.o. box 27460
Houston, TX 77227-7460

Anne E. Kennedy
The Law Office of Anne E. Kennedy
539 Heights Blvd
Houston, TX 77007-2521

Bingham & Lea PC
319 Maverick St
San Antonio TX 78212-4637

Bingham & Lea, P.C.
319 Maverick Street
San Antonio, Texas 78212-4637

Commerce National Bank
5300 Bee Cave Road, Building 2
Austin, TX 78746-5234

Commerce National Bank,
a branch of Lubbock National Bank
c/o: Lisa C. Fancher
Fritz, Byrne, Head & Gilstrap, PLLC
221 W. 6th Street, Suite 960
Austin, TX 78701-3444

David Salazar
3618 Fossil Creek
San Antonio TX 78261-3001

EL TIEMPO CANTINA-WDLS, LTD
p.o. box 27460
Houston, TX 77227-7460

Internal Revenue Service
PO BOX 7346
Philadelphia, PA 19101-7346

John P Dillman
Linebarger Goggan Blair & Sampson
PO Box 3064
Houston TX 77253-3064

Montgomery Co Tax Assessor-Collector
400 N San Jacinto St
Conroe TX 77301-2823

Montgomery County
c/o John P. Dillman
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, Tx 77253-3064

Sushihana Investment LP
1810 NW Military Hwy
San Antonio, TX 78213-2422

Sushihana Investments, LP
1810 NW Military Hwy
San Antonio, TX 78213-2422

United States Trustee
P.O. Box 1539
San Antonio, TX 78295-1539

United States Trustee - SA12
US Trustee's Office
615 E Houston, Suite 533
PO Box 1539
San Antonio, TX 78295-1539

William Rainey
11003 River Run
San Antonio, TX 78230-2523

Exhibit "A"

Page 1 of 2

A TRACT OF LAND CONTAINING 1.469 ACRES (63,996 SQ. FT.) BEING OUT OF LOTS 10, 11 AND 12 OF OAK RIDGE NORTH SECTION 1 AS RECORDED UNDER VOLUME 6, PAGE 33 IN MAP RECORDS OF MONTGOMERY COUNTY (M.R.M.C.), AND BEING OUT OF A CALLED 2.033 ACRE TRACT DESCRIBED TO TWH LIMITED PARTNERSHIP, AS RECORDED UNDER MONTGOMERY COUNTY CLERK'S FILE (M.C.C.F.) NO. 2001-020304, SITUATED IN CHARLES ESTERWALL SURVEY, ABSTRACT NO. 191, MONTGOMERY COUNTY, TEXAS, SAID 1.469 ACRE TRACT BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a set 5/8-inch iron rod with Tri-Tech cap on the West right-of-way line of Interstate Highway 45 (right-of-way varies) (TX DoT Project No. IR45-1(255)074 Sheet No. 12), north line of Borough Park Subdivision, as recorded under Slide C, Page 1169 in M.R.M.C., same being the South line of said Lot 12, southeast corner of said called 2.033-acre tract and herein described tract;

THENCE departing the West right-of-way line of said Interstate Highway 45, South 89°56'00" West along the North line of said Borough Park Subdivision, common South line of said Lot 12 and herein described tract, a distance of 339.54 feet to a found 5/8-inch iron rod with cap (unreadable) on the North line of said Borough Park Subdivision, southeast corner of Lot 13 of said Oak Ridge North Section 1, same being the southwest corner of said Lot 12 and herein described tract;

THENCE North 03°56'00" West along the East line of Lots 13, 14 and 15 of said Oak Ridge North Section 1, common West line of Lots 10, 11, 12 and herein described tract, at a distance of 280.06 feet to a point for the southwest corner of Lot 9 of said Oak Ridge North Section 1, as described to Joseph Vajas, as recorded under M.C.C.F. No. 8518966, East line of said Lot 15, same being northwest corner of said Lot 10 and herein described tract, a found 1/2-inch iron rod bears South 13° East, 4.4 feet;

THENCE North 80°49'03" East (called North 80°59'31" East) along the South line of said Lot 9, common North line of said Lot 10 and herein described tract, a distance of 39.72 feet (called 39.35 feet) to a set 5/8-inch iron rod with Tri-Tech cap on the South line of said Lot 9, same being the northwest corner of a called 0.7128 acre tract described to JEFECO Development Corp., as recorded under M.C.C.F. No. 9448811, common North line of said Lot 10, and an exterior corner of herein described tract;

THENCE South 09°10'00" East along the West line of said called 0.7128 acre tract, common East line of said 2.033 acre tract and herein described tract, a distance of 115.00 feet to a point for the southwest corner of said called 0.7128 acre tract, same being an interior corner of said called 2.033 acre tract and herein described tract, a found 5/8-inch iron rod with cap (unreadable) bears North 10° West, 0.8 foot;

Exhibit "A"

Page 2 of 2

THENCE North 80°49'09" East along the South line of said called 0.7128 acre tract, common North line of said called 2.033 acre tract and herein described tract, a distance of 270.00 feet to a found 1/2-inch iron rod with cap (unreadable) on the West right-of-way line of said Interstate Highway 45, for the southeast corner of said called 0.7128 acre tract, same being the northeast corner of said called 2.033 acre tract and herein described tract;

THENCE South 09°10'00" East along the West right-of-way line of said Interstate Highway 45, common East line of said Lots 11 and 12, called 2.033 acre tract and herein described tract, a distance of 115.05 feet (called 114.77 feet) to a point on the West right-of-way line of said Interstate Highway 45, northeast corner of remainder of called 6,612 sq. ft. described to John D. and Linda L. Hagerman, as recorded under M.C.C.F. No. 8912182, common East line of said Lot 12, same being a point of intersection along the East line of said called 2.033 acre tract and herein described tract, a found 5/8-inch iron rod with cap (unreadable) bears South 13° East, 0.3 foot;

THENCE departing the West right-of-way line of said Interstate Highway 45, South 50°51'11" West along the Northwest line of said called 6,612 sq. ft. tract, common Southeast line of said called 2.033 acre tract and herein described tract, a distance of 79.52 feet (called 79.50 feet) to a set "X" cut in concrete for the northwest corner of said called 6,612 sq. ft., and a point of intersection along the East line of said called 2.033 acre tract and herein described tract;

THENCE South 00°04'00" East along the West line of said called 6,612 sq. ft., common East line of said called 2.033 acre tract and herein described tract, a distance of 30.00 feet to a set "X" cut in concrete for the southwest corner of said called 6,612 sq. ft., same being an interior corner of said called 2.033 acre tract and herein described tract;

THENCE North 89°56'00" East along the South line of said called 6,612 sq. ft., common North line of said called 2.033 acre tract and herein described tract, a distance of 74.55 feet to a point on the West right-of-way line of said Interstate Highway 45, common East line of said Lot 12, for the southeast corner of said remainder, same being an exterior corner of said called 2.033 acre tract and herein described tract, a found 5/8-inch iron rod with cap (unreadable) bears South 02° East, 0.3 foot;

THENCE South 09°10'00" East along the West right-of-way line of said Interstate Highway 45, common East line of said Lot 12, called 2.033 acre tract and herein described tract, a distance of 21.54 feet (called 20.77 feet) to the Point of Beginning, and containing 1.469 acres (63,998 sq. ft.).

Exhibit "B"



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - IMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2010

1. PARTIES: Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: TWH Limited Partnership

Address: _____

Phone: _____ Fax: _____

E-mail: _____

Buyer: EVaneric Holding, LLC.

Address: 25440 1-45 N Woodlands, Tx

Phone: 281-771-3453 Fax: _____

E-mail: _____

2. PROPERTY:

A. "Property" means that real property situated in Montgomery County, Texas at 25807 14-45 Spring, Texas (address) and that is legally described on the attached Exhibit Survey or as follows:

B. Seller will sell and convey the Property together with:

- (1) all buildings, improvements, and fixtures;
- (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (4) Seller's interest in all licenses and permits related to the Property;
- (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: _____

Any personal property not included in the sale must be removed by Seller prior to closing.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

(If mineral rights are to be reserved an appropriate addendum should be attached.)

(If the Property is a condominium, attach condominium addendum.)

3. SALES PRICE: At or before closing, Buyer will pay the following sales price for the Property:

A. Cash portion payable by Buyer at closing	\$ <u>2,000,000.</u>
B. Sum of all financing described in Paragraph 4	\$ <u>- 0 -</u>
C. Sales price (sum of 3A and 3B)	\$ <u>2,000,000.</u>

(TAR-1801) 1-26-10

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

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Commercial Contract - Improved Property concerning 25807 1A-45

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3B as follows:

- A. **Third Party Financing:** One or more third party loans in the total amount of \$ _____ . This contract:
 - (1) is **not** contingent upon Buyer obtaining third party financing.
 - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- B. **Assumption:** In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____ .
- C. **Seller Financing:** The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ _____ .

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 20,000. as earnest money with Barbara Neudorfer (escrow agent) at 3040 Post Oak Blvd (address) _____ (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ _____ with the escrow agent to be made part of the earnest money on or before:
 - (i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
 - (ii) _____
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. **TITLE POLICY, SURVEY, AND UCC SEARCH:**

- A. **Title Policy:**
 - (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Capital Title (title company), in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
 - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
 - (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
 - (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
 - (3) Within 7 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

Commercial Contract - Improved Property concerning 25807 1A-45

B. Survey: Within 1 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller _____ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- (1) Within _____ days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.
- (2) Buyer does not require Seller to furnish a UCC search.

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

- (1) Within _____ days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.
- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. **PROPERTY CONDITION:**

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: AS IS

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B. Feasibility Period: Buyer may terminate this contract for any reason within 10 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 0 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(3) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(4) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within _____ days after the effective date, Seller will deliver to Buyer:

- (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;

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- (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- (g) copies of all current warranties and guaranties relating to all or part of the Property;
- (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- (i) copies of all leasing or commission agreements that currently relate to all or part of the Property;
- (j) a copy of the "as-built" plans and specifications and plat of the Property;
- (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- (l) a copy of Seller's income and expense statement for the Property from _____ to _____;
- (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (n) real & personal property tax statements for the Property for the previous 2 calendar years; and
- (o) _____

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any non-occupancy of the leased premises by a tenant;
- (4) any advance sums paid by a tenant under any lease;
- (5) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (6) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 – Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

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9. BROKERS:

A. The brokers to this sale are:

<u>David R. Salazar</u> Principal Broker	<u>043570</u> License No.	Cooperating Broker	License No.
<u>3618 Fossil Creek</u> Agent Address	<u>San Antonio, Texas</u> Address	Agent	Address
<u>210-415-0675</u> Phone	Fax	Phone	Fax
<u>dsalazarSAT@yahoo.com</u> E-Mail		E-Mail	

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

B. Fees: (Check only (1) or (2) below.)

(1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:	Cooperating Broker a total cash fee of:
<input checked="" type="checkbox"/> <u>2</u> % of the sales price.	<input type="checkbox"/> _____ % of the sales price.
<input type="checkbox"/> _____	<input type="checkbox"/> _____

The cash fees will be paid in Bexar County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

A. The date of the closing of the sale (closing date) will be on or before the later of:

- (1) 5 days after the expiration of the feasibility period.
- _____ (specific date).
- _____
- (2) 7 days after objections made under Paragraph 6D have been cured or waived.

[Signature] and Buyer [Signature]

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- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver to Buyer, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
 - (1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
 - (1) tax statements showing no delinquent taxes on the Property;
 - (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
 - (3) an assignment of all leases to or on the Property;
 - (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
 - (a) licenses and permits;
 - (b) maintenance, management, and other contracts; and
 - (c) warranties and guaranties;
 - (5) a rent roll current on the day of the closing certified by Seller as true and correct;
 - (6) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (7) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and
 - (8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.
- E. At closing, Buyer will:
 - (1) pay the sales price in good funds acceptable to the escrow agent;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
 - (4) sign an assumption of all leases then in effect; and
 - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

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12. SPECIAL PROVISIONS: (If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)

Sale must be approved by Federal Bankruptcy Judge

13. SALES EXPENSES:

- A. Seller's Expenses: Seller will pay for the following at or before closing:
 - (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
 - (2) release of Seller's loan liability, if applicable;
 - (3) tax statements or certificates;
 - (4) preparation of the deed and any bill of sale;
 - (5) one-half of any escrow fee;
 - (6) costs to record any documents to cure title objections that Seller must cure; and
 - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
 - (1) all loan expenses and fees;
 - (2) preparation fees of any deed of trust;
 - (3) recording fees for the deed and any deed of trust;
 - (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
 - (5) one-half of any escrow fee; and
 - (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

- A. Prorations:
 - (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
 - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
 - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other

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charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

- B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
- (1) terminate this contract and receive the earnest money, as liquidated damages and as Seller's sole remedy; or
 - (2) seek any other relief provided by law. Seller may may not enforce specific performance.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CASUALTY LOSS AND CONDEMNATION:

- A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:
- (1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;
 - (2) extend the time for performance up to 15 days and closing will be extended as necessary; or
 - (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.
- B. If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
- (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer; or
 - (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to: (a) Seller and the sales price will be reduced by the same amount; or (b) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

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18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
- B. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, 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.
- C. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to escrow agent within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. Seller Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

19. MATERIAL FACTS: To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.
- B. Except as otherwise provided in this contract, Seller is not aware of:
 - (1) any subsurface: structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any material physical defects in the improvements on the Property; or
 - (11) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(11) in Paragraph 12 or an addendum.)

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20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. AGREEMENT OF THE PARTIES:

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- D. Addenda which are part of this contract are: *(Check all that apply.)*
 - (1) Property Description Exhibit identified in Paragraph 2;
 - (2) Commercial Contract Condominium Addendum (TAR-1930);
 - (3) Commercial Contract Financing Addendum (TAR-1931);
 - (4) Commercial Property Condition Statement (TAR-1408);
 - (5) Commercial Contract Addendum for Special Provisions (TAR-1940);
 - (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TAR-1906);
 - (7) Notice to Purchaser of Real Property in a Water District (MUD);
 - (8) Addendum for Coastal Area Property (TAR-1915);
 - (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
 - (10) Information About Brokerage Services; and
 - (11) _____

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

E. Buyer may may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

23. TIME: Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. EFFECTIVE DATE: The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

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25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.
- H. Section 1958.154, Occupations Code requires Seller to provide Buyer a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the Seller sells the Property.
- I. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers.

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on _____ the offer will lapse and become null and void.

(TAR-1801) 1-26-10 Initialed for Identification by Seller  and Buyer  Page 12 of 13

Commercial Contract - Improved Property concerning _____

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT** your attorney **BEFORE** signing.

Seller: TWN Limited Partnership Buyer: EVaneric Holding, LLC

By: _____
 By (signature): [Signature]
 Printed Name: Howard V. Hu
 Title: General Partner

By: _____
 By (signature): [Signature]
 Printed Name: RAVE MOLARTY
 Title: Managing Member

By: _____
 By (signature): _____
 Printed Name: _____
 Title: _____

By: _____
 By (signature): _____
 Printed Name: _____
 Title: _____

AGREEMENT BETWEEN BROKERS
(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay _____ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:
 \$ _____, or
 _____ % of the sales price, or
 _____ % of the Principal Broker's fee.

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

Principal Broker
 By: _____

Cooperating Broker
 By: _____

ATTORNEYS

Seller's attorney: _____
 Address: _____
 Phone & Fax: _____
 E-mail: _____

Buyer's attorney: _____
 Address: _____
 Phone & Fax: _____
 E-mail: _____

Seller's attorney requests copies of documents, notices, and other information:
 the title company sends to Buyer.
 Seller sends to Buyer.

Buyer's attorney requests copies of documents, notices, and other information:
 the title company sends to Seller.
 Buyer sends to Seller.

ESCROW RECEIPT

Escrow agent acknowledges receipt of:
 A. the contract on this day September 25, 2017 (effective date);
 B. earnest money in the amount of \$ 20,000.00 in the form of check #9105
 on 9/25/17
 Escrow Agent: Barbara Neudorfer Address: 3040 Post Oak Blvd. Suite 150
Houston, TX 77056
 By: [Signature] Phone & Fax: 713-547-4741, 713-547-4744
 Assigned file number (GF#): 17-325665-PO E-mail: bneudorfer@ctot.com



Capital Title of Texas, LLC - Post Oak
3040 Post Oak Blvd Suite 150
Houston, TX 77056
Phone 713-547-4747 Fax 713-547-4746

RECEIPT FOR EARNEST MONEY

September 25, 2017

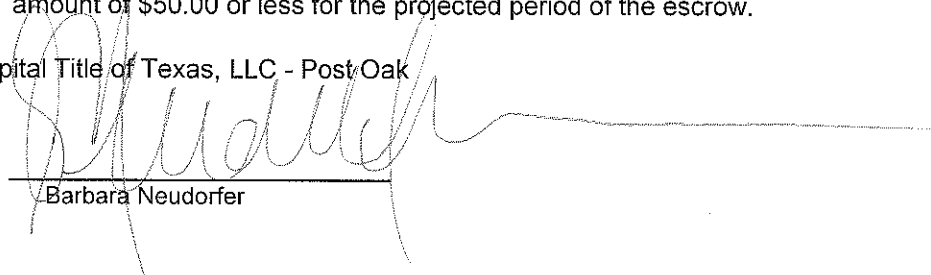
Order No.: 17-325665-PO
Buyer/Borrower(s): Evaneric Holding, LLC.
Seller(s): TWH Limited Partnership
Property Address: 25807 IH-45, Spring, TX 77380
Escrow Agent: Capital Title of Texas, LLC - Post Oak

Earnest Money \$ 20000.00

Escrow Agent hereby acknowledges receipt of Earnest Money from Purchaser in the form of:
 Company/Personal Check Cashier's Check Wire Transfer Other _____.

1. Earnest Money is to be held by Escrow Agent in accordance with the terms of the attached agreement or contract; however, Escrow Agent is not (a) a party to the attached agreement or contract and does not have liability for the performance or nonperformance of any party to this agreement or contract, (b) liable for collection of any check(s) received herein, (d) liable for interest on the Earnest Money and (d) liable for the loss of any Earnest Money caused by the failure of any financial institution in which the Earnest Money has been deposited.
2. Escrow Agent may, at its option, require the receipt, release and authorization in writing of all parties to the attached agreement or contract before paying the Earnest Money to any party.
3. All sums remaining in escrow with Escrow Agent beyond six (6) months from the date of this receipt may bear a reasonable service charge not to exceed ten percent (10%) of the remaining sum per year.
4. In the event the transaction contemplated by the attached agreement or contract is cancelled or otherwise not completed, Escrow Agent's disbursement of Earnest Money may be reduced by the amount of unpaid expenses incurred on behalf of the party(ies) receiving the earnest money and escrow agent may pay the same to the creditors, including, without limitation, fees for tax certificates, document recording, delivery charges, copying fees, attorney's fees, document preparation fees, surveyor's fees and fees for abstracting services not related to the issuance of title insurance.
5. Escrow Agent shall not be liable for placing Earnest Money in an interest-bearing or investment account, unless all parties to the attached agreement or contract have previously executed the separate and specific Investment Authorization form required by Escrow Agent, regardless of any terms or conditions contained in the attached agreement or contract to the contrary. NOTE: Escrow Agent reserves the right to refuse to invest any sum which it anticipates will generate interest in an amount of \$50.00 or less for the projected period of the escrow.

Capital Title of Texas, LLC - Post Oak

By: 
Barbara Neudorfer

9105

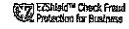
WOODLANDS SPECIALTY HOSPITAL, PLLC

25440 I-45 N, SUITE 100
THE WOODLANDS, TEXAS 77386



JPMorgan Chase Bank, N.A.
www.Chase.com

32-61/1110



9/25/2017

PAY TO THE
ORDER OF

Capital Title

\$ **20,000.00

Twenty Thousand and 00/100*****

DOLLARS

Capital Title

MEMO

LF#17-325665-PO

Earnest Money


AUTHORIZED SIGNATURE

⑈009105⑈ ⑆111000614⑆



Security features. Details on back.