

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

WALHOF PROPERTIES, LLC

Case No. 8:18-bk-05531-MGW

Debtor.

Chapter 11

**MOTION FOR AUTHORITY TO SELL REAL PROPERTY WHICH
IS SUBSTANTIALLY ONLY ASSET OF WALHOF PROPERTIES, LLC**

COMES NOW, WALHOF PROPERTIES, LLC, the above-named Debtor, and in accordance with 11 U.S.C. 363(b) and Fed. R. Bankr. P. 6004 moves this Court for an order authorizing the Debtor to sell real property which is substantially only asset of the Debtor, other than in the ordinary course of business, and subject to all valid liens, claims or financing, and shows as follows:

1. Movant is the debtor in this case.
2. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The Debtor filed its petition under chapter 11 of Title 11 of the United States Bankruptcy Code on July 2, 2018 and since such date has continued in possession of its property and operation of its business as a debtor-in-possession.
4. The Debtor is the owner of approximately 5.54 acres of unimproved commercial property in Humble, Texas (the “Property”) which is located near the George Bush Intercontinental Airport in Houston, Texas. This is the sole significant asset of the Debtor.
5. The Debtor proposes to sell the land subject to any liens, claims, and encumbrances, out of ordinary course of business, and in accordance with the Fed. R. Bankr. P. 6004 and 11

U.S.C. 363(b)(1) pursuant to a purchase agreement described below.

6. This is a private sale wherein the Debtor proposes to transfer its interest in the Property to DZMI Trustee, pursuant to the terms of a Purchase Agreement dated June 25, 2018 and amended on September 24, 2018, and attached hereto as Exhibit "A" (the "Purchase Agreement") and incorporated herein by reference.

7. Pursuant to 11 U.S.C. 363(b) the Debtor desires to sell the Property subject to all valid liens, claims, or encumbrances.

8. The purchase price set forth in the Purchase Agreement is \$2,718,000.00 for the land, with \$20,000.00 paid as earnest money and the remaining balance to be paid in cash at closing. Closing is to be finally scheduled after approval by the Court but has been tentatively scheduled for November 14, 2018.

9. The Debtor believes that the proposed purchase price is for a greater amount than the aggregate value of all liens on the Property and that, in addition, the proceeds of sale will permit all creditors and administrative expense claimants to be paid one hundred percent (100%) of their allowed claims in this case. Further, the Debtor believes that the price for the Property is fair and reasonable and is consented to by the equity security holders of the Debtor.

10. Property of the estate may be sold outside the ordinary course of business pursuant to Bankruptcy Code section 11 U.S.C. 363(b). A debtor-in-possession may sell substantially all of its assets prior to confirmation of a plan of reorganization. *In re Parkstone Med. Info. Sys.*, 2001 WI 3619822 (Bank. S.D. Fla. 2001). Bankruptcy courts have held that sales should be approved under 363(b)(1) when they are supported by 1) sound business judgment of the debtor 2) interested parties are provided with adequate and reasonable notice 3) the sale is fair and reasonable. *In re Able Body Temp. Servs., Inc.*, 2015 WL 791281, at *5 (M.D. Fla. Feb. 25, 2015), *aff'd*, 632 Fed.Appx. 602 (11th Cir. 2016); *In re Moore*, 608 F.3d 253, 262 (5th

Cir.2010); also *In re Schipper*, 933 F.2d 513, 515 (7th Cir.1991); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir.1986). Here each of the factors are met.

11. The Debtor, in the sound mind of its business judgment, has concluded that the sale of the Property to DZMI Trustee presents the best option for maximizing the value of Debtor's estate for its creditors and equity interest holders.

12. Bankruptcy Code §363(m) provides that reversal or modification on appeal of a transaction authorized under 11 U.S.C. 363(b) does not affect the validity of the sale to an entity that acquired the property in good faith. *In re Stadium Man. Corp.*, 895 F.2d 845 (1st Cir. 1990); *In re Adamson Co.*, 159 F.3d 896 (4th Cir. 1998).

13. Debtor negotiated the Purchase Agreement with DZMI Trustee at arms' length and good faith. The Debtor has marketed the Property for a substantial length of time pre-petition and continued that marketing post-petition. Any party interested in purchasing the Property was given the same opportunity as DZMI Trustee. Accordingly, the Debtor requests that the Order approving the sale find that if the sale successfully closes, that DZMI Trustee is a good faith purchaser entitled to the protections of Bankruptcy Code §363(m)

WHEREFORE, WALHOF PROPERTIES, LLC respectfully requests that this Court, after hearing on notice pursuant to Fed. R. Bankr. P. 2002, 6004, and 9014, approve the sale of the Property as set forth herein; authorize the Debtor to proceed in accordance with the Purchase Agreement; find that DZMI is a good faith purchaser pursuant to §363(m); and provide the Debtor with such other and further relief as is just and proper.

DATED, this 11th day of October, 2018.

/s/ Benjamin G. Martin
Benjamin G. Martin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion has been served electronically or by regular U.S. Mail postage prepaid to the United States Trustee, Attn: Denise E. Barnett, Esq., 501 E. Polk Ave., Suite 1200, Tampa, Florida 33602; the Debtor, Walhof Properties, LLC, 1111 Ritz Carlton Drive, Apt 1204, Sarasota, FL 34236; and to all creditors and parties-in-interest on the attached mailing matrix list this 11th day of October, 2018.

/s/ Benjamin G. Martin
Benjamin G. Martin
Attorney at Law
1620 Main Street - Suite 1
Sarasota, Florida 34236
(941) 951-6166
Florida Bar No. 464661
skipmartin@verizon.net

EXHIBIT A



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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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: **WALHOF PROPERTIES LLC**

Address: **21175 SH 249, STE 296, HOUSTON, TX 77070**

Phone: _____ E-mail: _____

Fax: _____ Other: _____

Buyer: **DZMI TRUSTEE AND/OR ASSIGNS**

ATTN: DAVID MAFRIGE

Address: **9219 Katy Fwy., STE 291, Houston, TX 77024-1520**

Phone: **(713)468-5005** E-mail: **DAVID.MAFRIGE@DZMI.NET**

Fax: _____ Other: _____

2. **PROPERTY:**

- A. "Property" means that real property situated in **HARRIS** County, Texas at
+/- 5.54 ACRES SWC FM 1960 & KENSWICK, HUMBLE, TX 77338

(address) and that is legally described on the attached Exhibit **A** or as follows:

RES A BLK 1

WALHOF GLOBAL LOGISTICS CENTER

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

- (1) 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;
- (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
- (3) Seller's interest in all licenses and permits related to the Property.

(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.)

3. **SALES PRICE:**

- A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing \$ **3,000,000.00**

(2) Sum of all financing described in Paragraph 4 \$ _____

(3) Sales price (sum of 3A(1) and 3A(2)) \$ **3,000,000.00**

(TAR-1802) 4-1-18

For & Graham, 8583 Katy Freeway, Suite 340 Houston TX 77024
Kyle Fox

Initialed for Identification by Seller

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

and Buyer

Phone: (281) 865-4388

Fax: _____

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Humble_DZMI

Commercial Contract - Unimproved Property concerning +/- 5.54 ACRES SWC FM 1960 & KENSWICK, HUMBLE, TX 77338

B. Adjustment to Sales Price: (Check (1) or (2) only.)

- ☐ (1) The sales price will not be adjusted based on a survey.
☒ (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ 12.43 per:

- ☒ (i) square foot of ☒ total area ☐ net area.
☐ (ii) acre of ☐ total area ☐ net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

- ☐ (i) public roadways;
☐ (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
☐ (iii) _____

(c) If the sales price is adjusted by more than N/A % of the stated sales price, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. FINANCING: ~~Buyer will finance the portion of the sales price under Paragraph 3A(2) 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 (TAR 1031).~~

☐ B. ~~Assumption:~~ In accordance with the attached Commercial Contract Financing Addendum (TAR 1031), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____.

☐ G. ~~Seller Financing:~~ The delivery of a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR 1031) in the amount of \$ _____.

5. EARNEST MONEY:

A. Not later than 3 days after the effective date, Buyer must deposit \$ \$20,000.00 as earnest money with ALAMO TITLE COMPANY (title company) at 1800 BERING, STE 150 HOUSTON, TX 77057 (address) CHRIS UNDERBRINK (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 title company 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 title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

Commercial Contract - Unimproved Property concerning 4/- 5.54 ACRES SWC FM 1960 & KENSWICK, HUMBLE, TX 77338

6. TITLE POLICY AND SURVEY:

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
 - (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 5 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.

B. Survey: Within 45 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/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. ~~Seller will reimburse Buyer _____ (insert amount) of the cost of the survey at closing, if closing occurs.~~
- ☐ (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/NSPS 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 ☐ Buyer (updating party), will, at the updating party's expense, obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to the other party and the title company within 20 days after the title company notifies the parties 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 the updating party to deliver an acceptable survey within the time required. The other party will reimburse the updating party _____ (insert amount or percentage) of the cost of the new or updated survey at closing, if closing occurs.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 10 days after Buyer receives the last of the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing 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 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 the commitment or survey is revised or any new document evidencing a title exception is delivered, Buyer may object to any new matter revealed in such revision or new document. Buyer's objection must be made within the same number of days stated in this paragraph, beginning when the revision or new

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document is delivered to Buyer. If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of 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 6C 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: NONE

B. Feasibility Period: Buyer may terminate this contract for any reason within 90 days after the effective date (feasibility period) by providing Seller written notice of termination.

(1) Independent Consideration. (Check only one box and insert amounts.)

☒ (a) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 100.00 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 title company. 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 deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

☐ (b) 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 pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Feasibility Period Extension: Prior to the expiration of the initial feasibility period, Buyer may extend the feasibility period for a single period of an additional 30 days by depositing additional earnest money in the amount of \$10,000.00 with the title company. If no dollar amount is stated in this Paragraph or if Buyer fails to timely deposit the additional earnest money, the extension of the feasibility period will not be effective.

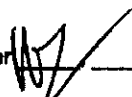
Additional Earnest Money is non-fundable but applicable towards the Purchase Price.

C. Inspections, Studies, or Assessments:

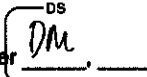
(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

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Initialed for Identification by Seller



and Buyer



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Commercial Contract - Unimproved Property concerning +/- 5.54 ACRES SWC FM 1980 & KENSWICK, HUMBLE, TX 77338

(2) 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.

(3) 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 10 days after the effective date, Seller will deliver to Buyer: (Check all that apply.) to the extent in Seller's possession.

- ☒ (a) copies of all current leases, including any mineral leases, pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- ☐ (b) 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;
- ☒ (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- ☐ (d) copies property tax statements for the Property for the previous 2 calendar years;
- ☒ (e) plats of the Property;
- ☒ (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
- ☐ (g) _____

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (Check all that apply.)

- ☒ (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- ☐ (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied in any format; and
- ☒ (c) deliver to Seller 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

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

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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 advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) 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.

9. BROKERS:

A. The brokers to this sale are:

Principal Broker: RETAIL SOLUTIONS

Cooperating Broker: FOX & GRAHAM, LLC

Agent: JIM THOMPSON

Agent: CLAY GRAHAM

Address: 9432 KATY FWY, STE 300

Address: 8582 KATY FWY, STE 240

HOUSTON, TX 77055

HOUSTON, TX 77024

Phone & Fax: (281)445-0033 (281)445-2233

Phone & Fax: (281)855-1308 (281)520-4209

E-mail: JIM@RETAILSOLUTIONS.US

E-mail: CLAY@FOXGRAHAM.COM

License No.: _____

License No.: _____

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.)

(Complete the Agreement Between Brokers on page 14 only if (1) is selected.)

☐ (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:

☒ 3.000 % of the sales price.

Cooperating Broker a total cash fee of:

☒ 3.000 % of the sales price.

The cash fees will be paid in HARRIS County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

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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) ☒ 15 days after the expiration of the feasibility period.

☐ _____ (specific date).

(2) 7 days after objections made under Paragraph 6C have been cured or waived.

- 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, 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 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) an assignment of all leases to or on the Property;
- (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
- (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
- (5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply with applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
- (6) 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 issuance of the title policy, all of which must be completed by Seller as necessary.

- E. At closing, Buyer will:

- (1) pay the sales price in good funds acceptable to the title company;
- (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 a lease for any part of 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.

(TAR-1802) 4-1-18

Initialed for Identification by Seller

and Buyer

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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.

12. SPECIAL PROVISIONS: The following special provisions apply and will control in the event of a conflict with other provisions of this contract. *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

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;
- (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 of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee;
- (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 charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the 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.

(TAR-1802) 4-1-18

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and Buyer

Commercial Contract - Unimproved Property concerning +/- 5.54 ACRES SWC FM 1960 & KENSWICK, HUMBLE, TX 77338

- 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, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue; or
(Check if applicable)
☐ enforce specific performance, or seek such other relief as may be provided by law.
- 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. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
(1) Seller and the sales price will be reduced by the same amount; or
(2) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or the title company 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.

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, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company 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 the title company may pay the same to the creditors.

(TAR-1802) 4-1-18

Initialed for Identification by Seller _____ and Buyer _____

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- C. The title company 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 the title company complies with this Paragraph 18, each party hereby releases the title company 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 the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- 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 Commercial Property Condition Statement (TAR-1408).
- ☒ 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 condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)

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.

(TAR-1802) 4-1-18

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

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Commercial Contract - Unimproved Property concerning +/- 5.54 ACRES SWC FM 1960 & KENSWICK, HUMBLE, TX 77338

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 Financing Addendum (TAR-1931);
☐ (3) Commercial Property Condition Statement (TAR-1408);
☐ (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
☐ (5) Notice to Purchaser of Real Property in a Water District (MUD);
☐ (6) Addendum for Coastal Area Property (TAR-1915);
☐ (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
☒ (8) Information About Brokerage Services (TAR-2501);
☐ (9) Information About Mineral Clauses in Contract Forms (TAR-2509); and
☐ (10) _____

(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 obligations and liability of Buyer under this contract, provided that such written assignment and assumption agreement executed by the Buyer and its assignee must be delivered to Seller at least seven (7) days prior to Closing.

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 title company receipts this contract after all parties execute this contract.

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

Commercial Contract - Unimproved Property concerning +/- 5.54 ACRES SWC FM 1960 & KENSWICK, HUMBLE, TX 77338

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 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract (*the Addendum for Coastal Area Property (TAR-1915) may be used*).
 - 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 (*the Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916) may be used*).
 - 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. 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. Brokers are not qualified to determine the credit worthiness of the parties.
 - H. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
 - I. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: _____
- 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 June 25, 2018, the offer will lapse and become null and void.

(TAR-1802) 4-1-18

Initialed for Identification by Seller

and Buyer

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Commercial Contract - Unimproved Property concerning +/- 5.54 ACRES SWC FM 1960 & KENSWICK, HUMBLE, TX 77338

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: WALHOF PROPERTIES LLC

Buyer: DZMI TRUSTEE AND/OR ASSIGNS

By: _____

By (signature): _____

Printed Name: CHRISTIAAN WALHOF

Title: CHIEF EXECUTIVE OFFICER AND AS MANAGING MEMBER

ATTN: DAVID MAFRIGE

By: _____

DocuSigned by:

By (signature): _____

Printed Name: DAVID MAFRIGE

Title: PRESIDENT

By: _____

By (signature): _____

Printed Name: _____

Title: _____

By: _____

By (signature): _____

Printed Name: _____

Title: _____

Commercial Contract -Unimproved Property concerning +/- 5.54 ACRES SWC FM 1960 & KENSWICK, HUMBLE, TX 77338

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.

The title company 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: _____

Cooperating Broker: _____

By: _____

By: _____

ATTORNEYS

Seller's attorney: Ken Fenelon Law PLLC
Kenneth B. Fenelon

Buyer's attorney: Dow Golub Remels & Gillbreath, PLLC
Attn: Adam Tepper

Address: 5851 San Felipe, Suite 700
Houston, TX 77057

Address: 2700 Post Oak Blvd Ste 1750
Houston TX 77056-5715

Phone & Fax: 832-701-2006

Phone & Fax: (713)526-3700 (832)524-3451

E-mail: ken@kenfenelonlaw.com

E-mail: atepper@dowgolub.com

Seller's attorney requests copies of documents, notices, and other information:

- ☒ the title company sends to Seller.
☒ Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:

- ☒ the title company sends to Buyer.
☒ Seller sends to Buyer.

ESCROW RECEIPT

The title company acknowledges receipt of:

- ☐ A. the contract on this day _____ (effective date);
☐ B. earnest money in the amount of \$ _____ in the form of _____ on _____

Title company: _____

Address: _____

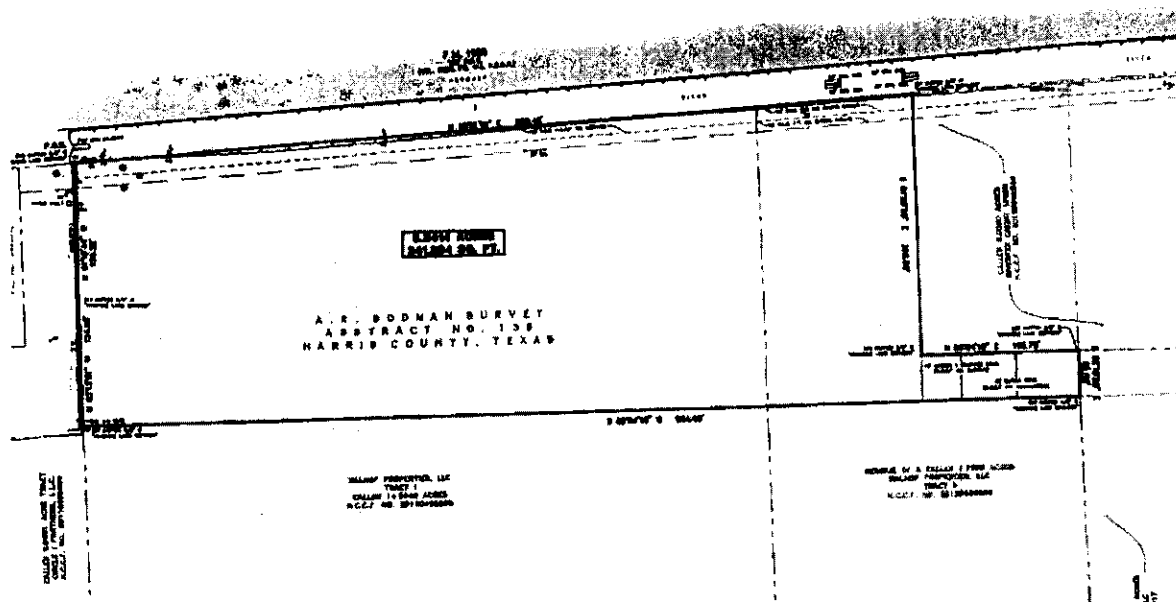
By: _____

Phone & Fax: _____

Assigned file number (GF#): _____

E-mail: _____

Exhibit "A"



11/2/2015



Information About Brokerage Services

Texas law requires all real estate licensees to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

TYPES OF REAL ESTATE LICENSE HOLDERS:

- A **BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker.
- A **SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

AS AGENT FOR OWNER (SELLER/LANDLORD): The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

AS AGENT FOR BOTH - INTERMEDIARY: To act as an intermediary between the parties the broker must first obtain the written agreement of each party to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
 - that the owner will accept a price less than the written asking price;
 - that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
 - any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

AS SUBAGENT: A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

FOX & GRAHAM, LLC	9000376		(281)855-1300
Licensed Broker /Broker Firm Name or	License No.	Email	Phone
Primary Assumed Business Name			
KYLE B. FOX	476243	KYLE@FOXGRAHAM.COM	(281)855-1300
Designated Broker of Firm	License No.	Email	Phone
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
Sales Agent/Associate's Name	License No.	Email	Phone
<i>DM</i>		6/25/2018 11:02:49 AM PDT	
Buyer/Tenant/Seller/Landlord Initials		Date	

Regulated by the Texas Real Estate Commission

Information available at www.trec.texas.gov

Fox & Graham, 8582 Katy Freeway, Suite 340 Houston TX 77024

Phone: (281) 855-1300

Fax:

IABS 1-0 Date

Humble, DZMI

Kyle Fox

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FIRST AMENDMENT TO COMMERCIAL CONTRACT – UNIMPROVED PROPERTY

This First Amendment to Commercial Contract – Unimproved Property (this “Amendment”) is entered into as of the 24th day of September, 2018 (the “Effective Date”), by and between Walhof Properties, LLC, a Texas limited liability company (“Seller”), and DZMI, Trustee and/or assigns (“Buyer”).

RECITALS:

WHEREAS, Seller and Buyer entered into that certain Commercial Contract - Unimproved Property effective as of June 26, 2018 (the “Agreement”) regarding certain real property in Houston, Harris County, Texas, as more particularly described therein;

WHEREAS, Seller and Buyer mutually agree to revise and amend the Agreement in certain respects, and otherwise ratify all the terms, conditions and covenants as set forth therein; and

WHEREAS, unless specifically stated otherwise, all defined terms in this First Amendment shall have the same definition as provided in the Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer mutually agree to amend the Agreement as follows:

1. Section 3A is amended to read:

The sales price to be paid by Buyer to seller for the Property shall be \$2,718,000.00.

2. Section 3B is amended to read:

The sales price will not be adjusted based on a survey.

3. Section 10A is amended to read:

The date of closing of the sale (closing date) will be on or before the later of November 14, 2018 or 7 days after objections made under Paragraph 6C have been cured or waived.

4. A Section 10G shall be added to Agreement, and shall read as follow:

Buyer shall not be obligated to close this transaction until all of the following requirements and conditions, benefitting Buyer only, have been performed:

- (a) Access. Buyer shall have received preliminary approval from the Texas Department of Transportation (“TXDOT”) for the construction of an access driveway to the Property from FM 1960, at a location reasonably acceptable to Buyer. Buyer agrees to diligently pursue the preliminary approval from TXDOT in good faith; and
- (b) Bankruptcy Approval. Within five (5) business days of the Effective Date, Seller shall file a motion with the bankruptcy court in Case Number 8:18-bk-05531, in the Middle District of Florida, Tampa Division, seeking an entry of an order (the “Approval Order”) which approves the Agreement. In addition, Seller shall obtain an order from the bankruptcy court which authorizes the sale of the Property to the Buyer with no liens, assessments or security interests against the Property which will not be satisfied out of the sales price (the “Sale Order”). Seller agrees to diligently pursue the entry of the Approval Order and Sale Order in good faith. The final Approval Order to be executed by the bankruptcy court must be approved by Buyer.

If any of the conditions in this Section 10G are not satisfied by the closing date, then Buyer may (i) receive the return of all of the earnest money, which return shall operate to terminate this Agreement and release Buyer and Seller from any and all liability hereunder, except for any provisions that expressly survive termination; (ii) extend the time available for the satisfaction of such condition(s) by up to a total of four (4) months; or (iii) if due to Seller’s breach of this Agreement, exercise Buyer’s remedies for Seller default pursuant to the Agreement; or (iv) waive such condition.

- 5. Section 20 is amended to provide that all notices to Seller shall be delivered at the following address:

Walhof Properties, LLC
1111 Ritz Carlton Drive, Apt. 1204
Sarasota, Florida 34236
Attention: Christiaan Walhof, Managing Member

In all other respects, the Agreement, as amended by this First Amendment, is ratified and confirmed. All other terms and provisions of the Agreement shall remain in full force and effect as originally executed or extended. In the event there is a conflict between the terms and provisions of this First Amendment and the Agreement as originally executed, the terms and provisions of this First Amendment shall control.

This First Amendment may be executed in separate counterparts, which together shall be fully effective as an original and together constitute one and the same instrument. Electronic signatures appearing hereon shall be deemed originals.

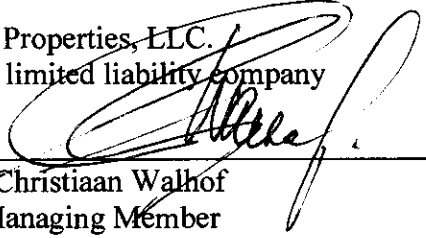
This First Amendment shall be binding upon and inure to the benefit of Buyer and Seller and their respective successors and assigns.

(Signatures to follow)

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed under proper authority and binding as of the Effective Date.

SELLER:

Walhof Properties, LLC.
a Texas limited liability company

By: 
Name: Christiaan Walhof
Title: Managing Member

BUYER:

DZMI, Trustee

By: _____
Name: David Z. Mafrige
Title: President


IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed under proper authority and binding as of the Effective Date.

SELLER:

Walhof Properties, LLC.
a Texas limited liability company

By: _____
Name: Christiaan Walhof
Title: Managing Member

BUYER:

DZMI, Trustee
DocuSigned by:
By:  _____
Name: David Z. Mafrige
Title: President

Label Matrix for local noticing
113A-8
Case 8:18-bk-05531-MGW
Middle District of Florida
Tampa
Thu Oct 11 22:34:23 EDT 2018

Florida Dept of Revenue
P.O. Box 6668
Tallahassee, FL 32314-6668

Aldine ISD Tax Office
14909 Aldine Westfield Rd.
Houston, TX 77032-3027

Caldar Holdings LLC
c/o Scott A Underwood, Esq.
Buchanan Ingersoll & Rooney, P.C.
401 E. Jackson Street, Suite 2400
Tampa, FL 33602-5236

Coats Rose Law Firm
9 Greenway Plaza, #1100
Houston, TX 77046-3653

Flatrock Companies, LLC
c/o Scott A. Underwood, Esq.
Buchanan Ingersoll & Rooney PC
401 E. Jackson St., Suite 2400
Tampa, FL 33602-5236

United States Trustee
501 E. Polk St., Ste 1200
Tampa, FL 33602-3945

Benjamin G Martin
Law Offices of Benjamin Martin
1620 Main Street, Suite 1
Sarasota, FL 34236-5824

Austerra Stable Growth Fund, LP and Stallion
c/o B. Weldon Ponder, Jr., Esq.
4408 Spicewood Springs Road
Austin, TX 78759-8504

IRS
Centralized Insolvency Operations
P.O. Box 7346
Philadelphia, PA 19101-7346

Benjamin K. Williams
10119 Lake Creek Pkwy
Austin, TX 78729-1757

Caleb Lawson
Lawson Group
21175 Tomball Parkway
Houston, TX 77070-1655

Coats Rose, P.C.
c/o Nancy H. Hamren
9 Greenway Plaza, Suite 1000
Houston, Texas 77046-0900

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

United States Trustee - TPA
Timberlake Annex, Suite 1200
501 E Polk Street
Tampa, FL 33602-3949

Coats Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, TX 77046-0900

Walhof Properties, LLC
1111 Ritz Carlton Dr., #1204
Sarasota, FL 34236-5598

Boeckermann, Grafstrom & Mayer, LLC
4470 W 78th St. Circle, Suite 200
Minneapolis, MN 55435-5419

Caleb Lawson; Lawson Group Holdings, Inc.
c/o Scott A. Underwood, Esq.
Buchanan Ingersoll & Rooney PC
401 E. Jackson St., Suite 2400
Tampa, FL 33602-5236

Department of Revenue
PO Box 6668
Tallahassee FL 32314-6668

Stallion Funding
10119 Lake Creek Parkway, #202
Austin, TX 78729-1785

Watson Family 1960 Land Holdings, LLC,
as Assignee of Caldar Holdings, LLC
c/o Scott A Underwood, Esq.
401 E. Jackson Street, Suite 2400
Tampa, FL 33602-5236

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Austerra Stable Growth Fund, LP

(u)Caldar Holdings LLC

(u)Flatrock Companies, LLC

End of Label Matrix	
Mailable recipients	21
Bypassed recipients	6
Total	27