

STATE OF TEXAS §

COUNTY OF BRAZOS §

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
LAKE WALK INNOVATION CENTER

This Agreement is entered into on this 24th day of November, 2020 (**Effective Date**) by and between Bryan Commerce and Development, Inc., a Texas local government corporation created pursuant to Chapter 431 of the *Texas Transportation Code* (“**BCD**”), Bryan/Traditions, LP, a Texas limited partnership (“**Developer**”), the City of Bryan, Texas (“**City**”) a home rule municipality and Traditions Acquisition Partnership L.P., a Texas limited partnership (“**TAP**”).

RECITALS

- A. WHEREAS, the Texas Constitution prohibits any city, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so, but the definition of public purpose specifically includes economic development and diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce; and
- B. WHEREAS, Chapter 380 of the Texas Local Government Code (“**Chapter 380**”) was passed to implement the provisions of Article III Section 52-a of the Texas Constitution; accordingly Chapter 380 permits the governing body of a municipality to establish and provide for the administration of one or more programs, to promote state or local economic development and to stimulate business and commercial activity within the city limits of the City (“**Permitted Area**”); and
- C. WHEREAS, Developer is in the process of acquiring that certain parcel of land located at 3891 S. Traditions Dr., in the Bio-corridor Planned Development of Bryan, Texas, containing approximately 8 acres and its associated 47,000 plus square feet of building improvements, formerly known as the “Nutrabolt Building”, as more particularly described in **Exhibit “A”**, which is attached hereto and incorporated herein for all purposes (“**Property**”); and
- D. WHEREAS, the Property’s unique location and architecture provide the potential of attracting and encouraging economic development, support of new and growing businesses, innovation, stimulation of business and commercial activity in the City, and new venture creation through the development of an incubator/innovation center located on the Property (“**Center**” or “**Project**”); and
- E. WHEREAS, in order to make the Center viable, Developer is requesting BCD and City participation in this Project in order to encourage the economic development and job growth that it is expected to create; and
- F. WHEREAS, the City and BCD find that the costs associated with this Agreement are outweighed by the community benefits to be gained, and that it is in the best interests of the City to spur economic development in the City by supporting this Project.

Now, therefore, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BCD, Developer, TAP, and the City agree as follows:

Developer Obligations

1. Acquisition.

- a. The Property is subject to a commercial contract whereby the current owner, DCMP Real Estate I, LLC has agreed to sell the Property to William Cole, Inc. for the sales price of \$9,200,000.00 ("**Contract**").
- b. Immediately upon the execution of this Agreement by all parties the Developer will acquire the Contract from William Cole, Inc. and proceed to purchase the Property in accordance with the terms of the Contract, a copy of which is attached hereto as **Exhibit "B"**.
- c. Developer will obtain purchase money financing from First Financial Bank, N.A. (the "**Bank**"), with the Bank having an office located in the City.
- d. All costs incidental to this sale, including but not limited to survey costs, title insurance, lien releases, and taxes shall be apportioned as closing costs, and BCD shall not be invoiced separately.

2. Lease of Property.

- a. Developer will engage a commercial real estate broker to locate tenants for the Project that will advance the image of the City, and shall negotiate associated leases in accordance with the requirements of this section. Developer shall have the authority to enter into Tenant leases of the Project, subject to the terms of this Agreement. Developer shall have the right to set lease terms with each tenant in accordance with a rental rate schedule mutually agreed upon in writing by Developer, City and BCD. Any variation to the approved rental rate schedule shall require written approval of the City and BCD. Tenant leases must include indemnification and insurance requirements satisfactory to the City and BCD. City and BCD shall be named as additional insureds and indemnitees in all lease agreements. Tenant leases shall be in a form approved by the City and BCD. Variations or modifications to the approved standard tenant lease agreement form shall require approval of the City and BCD. Tenant leases shall prohibit subleasing or assignment of the lease agreement by the tenant, unless approved in writing in advance by City and BCD. The term of any tenant lease agreements may not exceed five (5) years, unless a longer term is approved by the City Manager as delegated below.
- b. Developer will occupy the defined areas of the second floor of the Project, as shown in **Exhibit "C"**, in order to support and encourage economic development, innovation activities, and business and commercial activity in the City.
- c. Any lease agreement entered into with a TAP Affiliate or Person or legal entity that is or was a TAP member or is or was a TAP Affiliate or TAP Affiliate member or principal as of the date of execution of this Agreement or at any time during the term of this

Agreement, shall require prior written approval by the City and BCD. Developer shall provide City and BCD with a copy of all tenant lease agreements.

- d. For the purposes of this Agreement, City and BCD hereby delegate approval authority as to the matters contained in Section 2 to the Bryan City Manager.

3. Maintenance and Operations.

- a. TAP will be responsible for managing the Project, building and the incubator/innovation activities and uses, and in consideration of those services, TAP will occupy a portion of the Project, not to exceed 6,000 square feet, pursuant to the terms and conditions of a lease agreement between the Developer and TAP ("**TAP Lease Agreement**"), which must be approved in writing by the City and BCD, prior to execution by Developer and TAP. The TAP Lease Agreement will include a requirement that TAP is responsible for the performance of its obligations and the Developer's obligations as set forth in Paragraphs 3 and 4 of this Agreement. Upon the execution of the TAP Lease Agreement, the TAP Lease Agreement shall be incorporated herein as **Exhibit "D"** as an express amendment to this Agreement. The TAP Lease Agreement may not be assigned or subleased by TAP, without the prior written approval of BCD and City.
- b. The management services to be provided by TAP shall be expressly set forth in the TAP Lease Agreement and will include arranging for and overseeing collection of rent and other facility use fees on behalf of the Developer, the payment of utilities, and operating expenses, payment of taxes, maintenance and repair of the Project, janitorial services, pest control, and other general building operations functions, parking lot maintenance and repair, grounds maintenance and landscaping, accounting and administrative expenses of the Center, including direct expenses necessary for TAP to carry out its management duties of the Center, and marketing services as further defined in the TAP Lease Agreement, which all shall be an expense of the Developer.
- c. During the term of this Agreement, an annual operating budget for the management and operation of the Center shall be approved annually by Developer and BCD. During the term of the TAP Lease Agreement, TAP shall submit a proposed operating budget ("**Proposed Operating Budget**") to the Developer and to the Bryan City Manager, initially within sixty (60) days after the Effective Date of the Agreement, and thereafter on or before May 1 of each year. The operating year shall be for the period commencing on October 1 and ending on September 30 of each year during the term of this Agreement ("**Operating Year**"), provided that the first Operating Year shall be a shortened year commencing on the Effective Date and ending on next following September 30, and the last Operating Year shall be a shortened year, ending upon the expiration of this Agreement.

The Proposed Operating Budget shall include a monthly detailed line item containing good faith estimates of all operating expenses including, without limitation, the principal and interest payments on the Bank Loan. The Proposed Operating Budget will be agreed upon by Developer and BCD within sixty (60) days of the Proposed Operating Budget being delivered by TAP to Developer and BCD (if approved, herein called the "**Operating Budget**"). If BCD and Developer fail to approve the Operating

Budget within the sixty (60) day period, TAP shall continue to manage the Center in accordance with standards set forth in this Agreement at a level of expenditures comparable to those of the proceeding year's annual operating budget.

- d. TAP will establish and maintain an operating account in Developer's name at a bank of Developer's choosing (the "**Operating Account**") for the purposes of accepting daily deposit of gross revenues from the operation of the Project.
- e. TAP shall comply with the approved Operating Budget. On an annual basis, expenditures in aggregate in excess of the approved Operating Budget shall not be eligible for reimbursement nor shall they be funded by a Grant from BCD, unless a budget amendment is approved in advance by the City Manager, or the expenditure is an Emergency Expenditure as defined herein. TAP shall immediately notify the Developer and the City Manager in the event TAP has reason to believe the Operating Expenses will exceed the approved Operating Budget. TAP will provide the Developer and the City Manager justification or explanation for the budget variance. TAP, upon the City Manager's written approval of a budget amendment, is entitled to make additional expenditures which shall be eligible for reimbursement or may be funded by a Grant from BCD. Emergency expenditure shall mean an expenditure necessary to correct or repair a condition, that in the reasonable judgment of TAP, if not corrected or repaired immediately, would create at the Center an imminent danger to person or property, and there is not time to obtain the written permission of the Developer and the City Manager. TAP agrees to promptly notify the Developer and the City Manager in writing within 24 hours of any event causing an Emergency Expenditure.

4. Books, Records, and Financial Reports.

- a. TAP shall keep separate, full and accurate books of account and such other records as are necessary to reflect the operation of the Center . All accounting records shall be maintained in accordance with generally accepted accounting principles. All such books, records, and reports shall be maintained separately from other business activities operated by TAP. TAP agrees to maintain reasonable and necessary accounting, operating, and administrative controls relating to the financial aspects of the Center and such controls shall provide checks and balances designed to protect Bryan Traditions, LP, TAP, BCD and City. TAP and Developer shall maintain all financial and accounting books and records for a period of at least five (5) years after the expiration or earlier termination of this Agreement, and City and BCD shall have the right to inspect and audit such books and records during such period.
- b. Upon seven (7) days prior written notice to TAP, which notice shall set forth the reasonable date and time that BCD or City desire to inspect the books and records, BCD, City or their authorized agents, auditors, or representative shall have the right during normal business hours to review, inspect, audit, and copy the books, records, invoices, deposit receipts, canceled checks, and other accounting and financial information maintained by TAP in connection with the operation of the Center. All such books and records shall be made available to BCD and City at TAP's office in the Center, unless City and TAP agree upon another location. City and BCD, at their own

expense, shall have the right to retain an independent accounting firm to audit the books and records of the Center from time to time.

- c. During the term of this Agreement, within thirty (30) days of the end of each month, TAP shall prepare a Monthly Report of all gross revenues collected by TAP. The monthly report shall also include all categorized operating expenses associated with the Center. The Monthly Report shall compare budget, actuals, and the previous year amounts.
- d. Each year on the anniversary of the Effective Date of this Agreement the Developer will certify to the City, BCD, and the Bank that it is in compliance with each provision of this Agreement.

5. Operating Costs and Note Payments.

- a. Beginning with the first full month following the sixtieth (60th) month after the Effective Date of this Agreement and continuing each month thereafter during the Term of the Agreement, TAP will pay on the thirtieth (30th) day of each calendar month thereafter, an amount equal to 30% of the operating expense deficits and principal and interest payment deficits for the preceding month into the Operating Account to cover the deficit.

For the purposes of this Agreement, the term “deficit” shall mean the negative differential between the combined total of the monthly budgeted operating costs and monthly principal and interest payment obligations and the gross revenues received and deposited in the Operating Account in any given month during the term of the Agreement.

“Gross revenues” shall mean the sum of all rent, building use fees, expense reimbursements and other revenue paid to the Developer for the use and occupancy of the Property.

6. Grant Reimbursements. The Developer will pay to BCD a "**Preferred Return on Grant**" consisting of 5% on an annualized pro rata basis of the amount of any unreimbursed Grant Payments made to Developer by BCD pursuant to provisions for Distributions below. The Preferred Return on Grant will be added to the balance of unreimbursed Grant Payments, and distributed as provided for in the Distributions provisions below.

BCD's Obligations.

- 7. Grant Payments. The term “**Grant Payment(s)**” or “**Grant(s)**” shall mean an amount of money to be paid by BCD to Developer, from time to time, pursuant to the terms of this Agreement and as an economic development program allowable under Chapter 380.
- 8. Grant Reserve Fund. BCD will deposit the sum of \$300,000 into an operating account owned and controlled by the Developer as a “Grant Reserve Fund” out of which future Grants described below will be funded. On a quarterly basis BCD will replenish the Grant Reserve Fund so that the balance of the Grant Reserve Fund at the beginning of the applicable quarter will be equal to or greater than the estimated costs to be funded by Grants during the following quarter.

9. Acquisition of Property.

- a. Immediately following the approval and execution of this Agreement, BCD will make a Grant Payment by delivering to South Land Title Company (GF No. BC2009384) a wire in the amount of \$100,000.00 to replace the earnest money that was deposited by William Cole, Inc. at South Land Title Company pursuant to the terms of the Contract, and at the same time, William Cole, Inc. will deliver to South Land Title Company an assignment of the Contract to the Developer, and the earnest money currently on deposit with South Land Title Company will be released to William Cole, Inc.
- b. BCD will provide a Grant for the down payment on the purchase of the along with all closing costs associated with the closing as reflected on the closing settlement statement approved in advance by BCD.

10. Grant for Distributable Cash Flow from Operations.

- a. Within thirty (30) days following each calendar month hereafter, to the extent that Distributable Cash Flow from Operations is negative, BCD will provide a Grant to the Developer in an amount necessary to cover the deficits.
- b. The Bank (being an express third party beneficiary hereof) may enforce the obligations of BCD under this section. For the avoidance of doubt, BCD's obligations under this Agreement (including but not limited to this Section 10) are each fully recourse obligations of BCD and not limited to income derived from the Property or the Project except as expressly provided in sections entitled "Distributable Cash Flow from Operations" and "Distributable Cash Flow from Capital Events".

11. Distributable Cash Flow from Operations. The term "**Distributable Cash Flow from Operations**" shall mean the sum of all rent, building use fees, expense reimbursements and other revenue paid to the Developer for the use and occupancy of the Property less principal and interest payments on the purchase money loan, operating expenses for utilities, taxes, insurance, maintenance, capital improvements, other operating costs, and reasonable reserves established by the Developer for future operations.

12. Distributions of Distributable Cash Flow from Operations. On a quarterly basis, within thirty (30) days following the end of each calendar quarter hereafter, the Developer shall disburse any Distributable Cash Flow from Operations as follows:

- a. First, 100% of distributions to BCD until all of BCD's aggregate unreimbursed Grant is reduced to \$0.00.
- b. Then 100% of distributions to TAP until all of TAP's aggregate contributions to fund its 30% share of deficit funding as outlined in Paragraph 5a have been returned to TAP, and all of its paid budget variances as outlined in Paragraph 3.e have been returned to TAP.
- c. Then 70% to BCD and 30% to TAP, pursuant to the terms and conditions of the Partnership Amendment as herein defined.

- d. No Distributable Cash Flow from Operations shall be distributed at any time an amount remains unpaid for payments then due on the Bank loan, whether as regularly scheduled payments or if payments thereon are accelerated.
13. Partnership Amendment. Contemporaneous with the approval and execution of this Agreement, TAP and BCD shall enter into an amendment (“**Partnership Amendment**”) to the Amended and Restated Agreement of Limited Partnership of Bryan/Traditions, L.P. dated February 25, 2009 (“**Partnership Agreement**”) by which the provisions of this Agreement concerning Distributions of Distributable Cash Flow from Operations shall be incorporated into the Partnership Agreement, and shall remain in effect so long as there remains any unpaid or unreturned Grant Payments. The Partnership Amendment shall provide that all distributions from Distributable Cash Flow from Operations shall be distributed as herein described.
14. Distributable Cash Flow from Capital Events.

The term “Distributable Cash Flow from Capital Events” shall mean net cash flow from the sale of all or any portion of the Property less deducting any partial release or full release payment required by the Bank loan; and after deducting any expenses, fees, commissions or closing costs related to the capital event, and deducting any reasonable reserves established by the Developer for future operations. Notwithstanding any provision of this Agreement or the Partnership Agreement to the contrary, no portion of the Property or Project may be sold by Developer without the prior written approval of the City and BCD; subject, however, to the right of the Bank to seek foreclosure or a deed in lieu of foreclosure pursuant to the terms of its deed of trust.
15. Distributions of Distributable Cash from Capital Events. Within thirty (30) days following the receipt of any Distributable Cash Flow from Capital Events, the Developer shall disburse any Distributable Cash Flow from Capital Events as follows:
 - a. First, 100% of distributions to BCD until all of BCD’s aggregate unreimbursed Grant has been is reduced to \$0.00.
 - b. Then 100% of distributions to TAP until all of TAP’s aggregate contributions to fund its 30% share of deficit funding as outlined in Paragraph 5.a have been returned to TAP, and all of its paid budget variances as outlined in Paragraph 3.e have been returned to TAP.
 - c. Then 70% to BCD and 30% to TAP, pursuant to the terms and conditions of the Partnership Amendment as herein defined.
 - d. No Distributable Cash Flow from Capital Events shall be distributed at any time an amount remains unpaid for payments then due on the Bank loan, whether as regularly scheduled or if payments thereon are accelerated.
16. Partnership Amendment. Contemporaneous with the approval and execution of this Agreement, TAP and BCD shall enter into the Partnership Amendment as above described, by which the provisions of this Agreement concerning Distributions of Revenue from Capital Events shall be incorporated into the Partnership Agreement, and shall remain in effect so long as there remains any unpaid or unreturned Grant Payments. The

Partnership Amendment shall provide that all distributions from Revenue from Capital Events shall be distributed as herein described.

City's Obligations

17. Assurance of Performance. Subject to Section 18 hereof, the City shall fund BCD in an amount necessary for BCD to meet its obligations under this Agreement.
18. Funding. This Agreement is subject to annual appropriation for same by the City Council. All funds to be paid by the City are payable from lawfully available funds.

Term, Breach, & Termination

19. This Agreement shall have a term of twelve (12) years following the closing on the acquisition of the Property and the simultaneous funding of the Bank loan.
20. If the Developer or TAP fails to comply with any provision of this agreement, BCD may notify Developer of the breach in writing, at which point Developer shall have thirty (30) days to cure same. If the breach cannot be reasonably cured within thirty (30) days, the parties may agree in writing to a longer period of time to cure. Failure to timely cure such a breach shall be an event of default, and BCD and City may terminate this Agreement other than its obligations directly to, or for the benefit of, the Bank.
21. If Developer or TAP is in default on this Agreement, and has failed to cure such default in accordance with the preceding paragraph, in addition to other remedies available in equity or at law, BCD may take possession, ownership and control of the Property (and therefore the Project), but only after complying with the following procedures:
 - a. BCD and the Bank shall enter into an assumption agreement whereby BCD assumes the obligations of the Developer to the Bank pursuant to the purchase money loan/Bank loan;
 - b. Upon receipt of evidence that the Developer will be released from the obligations of the purchase money loan the Developer will execute and deliver to BCD a special warranty deed and other necessary documentation to transfer the Property to BCD.
 - c. The Developer's right to occupy any portion of the Property will terminate upon delivery of the special warranty deed.
 - d. BCD will honor all then existing third-party leases that are not in default and are compliant with the terms of this Agreement, with the exception that any lease agreement with TAP or a TAP Affiliate (including, members of TAP, entities owned by or controlled by TAP, and any members or principals of TAP Affiliates as of the date of execution or that come into existence during the term of this Agreement) shall automatically terminate upon the termination of this Agreement.

Miscellaneous

22. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties:

If to BCD: Bryan Commerce and Development, Inc.
P.O. Box 1000
Bryan, Texas 77805

If to Developer: Bryan/Traditions, LP
Attn: Spencer Clements
4250 South Traditions Drive
Bryan, TX 77807

If to TAP: Traditions Acquisition Partnership, L.P.
Attn: Peter Currie
4250 South Traditions Drive
Bryan, TX 77807

If to City: City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

If to the Bank: First Financial Bank, N.A.
c/o Austin Bryan
1716 Briarcrest Drive, Suite 400
Bryan, Texas 77802

23. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
24. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
25. Sole Agreement. This (and, as to the Developer, the documents evidencing the Bank Loan) Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
26. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

27. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
28. No Waiver. City's failure to take action to enforce this Agreement in the event of Developer default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.
29. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
30. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
31. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
32. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
33. Gender and Number. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.
34. Assignment. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by Developer without the prior written consent of the City and BCD.
35. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties with respect to this project, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other party for acts or obligations of the other party.
36. 380 Agreement. This Agreement is an agreement under the authority of Chapter 380 of the Texas Local Government Code, and is not a contract for services.
37. Bank as Express Third Party Beneficiary. The Bank is hereby made an express third party beneficiary of this Agreement. The Bank shall have the right, acting in its own capacity and not on behalf of the parties hereto, to enforce the obligations of each of BCD, the Developer, the City and TAP. Any recovery made by the Bank shall be used in payment of the Bank loan.
38. Definition of Affiliate and Person. "**Affiliate**" of any Person means any other Person directly or indirectly controlled by or under direct or indirect common control with such Person. As used in this definition, the term "**control**," "**controlling**" or "**controlled** by" shall mean the possession,

directly or indirectly, of the power either to (i) vote fifty-one percent (51%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (ii) direct or cause the direction of the actions, management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender." "Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental entity or any other form of entity.

Executed and effective on this the 24th day of November, 2020.

CITY OF BRYAN

Andrew Nelson

Andrew Nelson, Mayor
Date: 11/24/2020

APPROVED AS TO FORM:

Janis Hampton

Janis K. Hampton, City Attorney

ATTEST:

Mary L Stratta

Mary Lynne Stratta, City Secretary



GRANTOR:

BRYAN COMMERCE AND DEVELOPMENT,
INCORPORATED, a Texas local government
corporation

By: Andrew Nelson
Andrew Nelson, President

ATTEST:

Mary L Stratta
MARY LYNNE STRATTA, City Secretary



APPROVED AS TO FORM:

Janis Hampton
JANIS HAMPTON, City Attorney



BRYAN/TRADITIONS, LP, a Texas limited partnership

By: Traditions Acquisition Partnership GP, LLC, a
Texas limited liability company, its General Partner

By: Spencer Clements
W. Spencer Clements, Jr.,
Vice President

**Traditions Acquisition Partnership GP, LLC, a
Texas limited liability company**

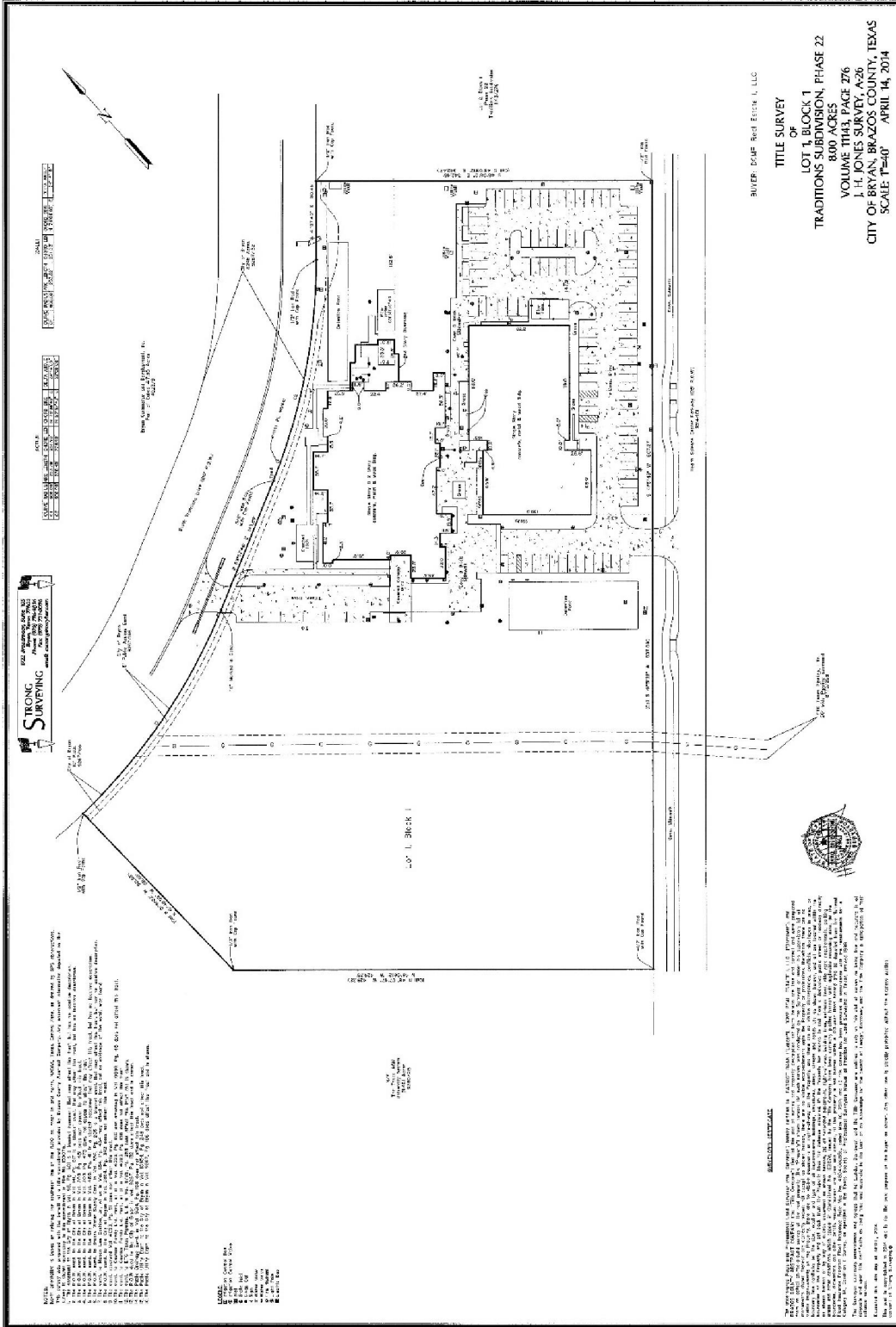
By: **Peter Currie**
Name: Peter H. Currie
Title: President

Exhibit "A"

Legal Description of Real Property

Being all that certain lot, tract or parcel of land lying and being situated in Brazos County, Texas and being Lot One (1), Block One (1), THE TRADITIONS SUBDIVISION, PHASE 22, an addition in the City of Bryan, Texas, according to plat recorded in Volume 11143, page 276, Official Records of Brazos County, Texas.

Survey Attached on Next Page



STRONG SURVEYING
 1000 W. 10TH STREET, SUITE 100
 BRYAN, TEXAS 77802
 PH: 817.781.1111
 FAX: 817.781.1112
 WWW.STRONGSURVEYING.COM

NOTES:

1. THIS SURVEY IS BASED UPON THE SURVEYING DATA OF THE SURVEYOR, L. H. JONES, AND THE SURVEYING DATA OF THE SURVEYOR, EDMP RIGHT ENTER, L, LLC.
2. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SURVEYED PROPERTY AND HAS FOUND NO EVIDENCE OF ANY OTHER SURVEYING DATA.
3. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SURVEYED PROPERTY AND HAS FOUND NO EVIDENCE OF ANY OTHER SURVEYING DATA.
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10. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SURVEYED PROPERTY AND HAS FOUND NO EVIDENCE OF ANY OTHER SURVEYING DATA.

LEGEND:

- 1. CENTER LINE
- 2. RIGHT OF WAY
- 3. EASEMENT
- 4. UTILITY
- 5. FENCE
- 6. CURB
- 7. DRIVE
- 8. SIDEWALK
- 9. DRIVE
- 10. DRIVE

REVISIONS:

NO.	DATE	DESCRIPTION
1	04/14/14	ISSUED FOR RECORD



BUVER, EDMP RIGHT ENTER, L, LLC
TITLE SURVEY
 OF
LOT 1, BLOCK 1
 TRADITIONS SUBDIVISION, PHASE 22
 400 ACRES
 VOLUME 148 OF PAGE 276
 L. H. JONES SURVEY, 2004
 CITY OF BRYAN, BRAZOS COUNTY, TEXAS
 SCALE: 1"=40' APRIL 14, 2014



COMMERCIAL CONTRACT - IMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. 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: DCMP Real Estate I, LLC

Address: 3891 S Traditions Dr, Bryan, TX 77807-7595
Phone: (512)983-1181 E-mail: dcunningham@nutrabolt.com, manish@fitjoyfoods.com
Fax: Other:

Buyer: William Cole, Inc

Address: 4250 S Traditions Dr, Bryan, TX 77807-7729
Phone: (281)250-0838 E-mail: sclements@williamcoleinc.com
Fax: Other:

2. PROPERTY:

A. "Property" means that real property situated in Brazos County, Texas at 3891 S Traditions Dr, Bryan, TX 77808 (address) and that is legally described on the attached Exhibit or as follows: Lot 1, Block 1, The Traditions PH 22, 8.0 Acres, Brazos County, TX

- 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: the fitness equipment located on the property
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 Commercial Contract Condominium Addendum (TXR-1930) or (TXR-1946).)

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 \$ 3,100,000.00
B. Sum of all financing described in Paragraph 4 \$ 6,000,000.00
C. Sales price (sum of 3A and 3B) \$ 9,100,000.00

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Commercial Contract - Improved Property concerning _____

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 \$ 6,000,000.00 . 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 (TXR-1931).
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TXR-1931), 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 (TXR-1931) in the amount of \$ _____ .

5. EARNEST MONEY:

- A. Not later than 3 days after the effective date, Buyer must deposit \$ ~~\$30,000.00~~ ^{\$50,000.00} as earnest money with South Land Title Company (title company) at 3800 Cross Park Drive, Bryan, TX (address) Andrea Goodson (closing agent). 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 \$ 50,000.00 with the title company to be made part of the earnest money on or before:
 - (i) 1 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.

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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 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 10 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.

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B. Survey; Within 5 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 30 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 30 days if necessary for the updating party to deliver an acceptable survey within the time required. The other party will reimburse the updating party N/A (insert amount or percentage) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- (1) Within 10 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 14 days after Buyer receives the last of 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 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 document is delivered to Buyer. 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.

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(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: N/A

B. Feasibility Period: Buyer may terminate this contract for any reason within ~~420~~ 60 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 \$ 500.00 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 _____ days by depositing additional earnest money in the amount of \$ _____ 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.

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

Commercial Contract - Improved Property concerning 3891 S Traditions Dr, Bryan, TX 77808

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 5 days after the effective date, Seller will deliver to Buyer: *(Check all that apply.)*

- ~~(a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;~~
- ~~(b) copies of all current leases, including any mineral 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;
- (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, utility, 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 the tenants of 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 January 1, 2018 to April 30, 2020 ;
- (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (n) real and personal property tax statements for the Property for the previous 2 calendar years;
- (o) Tenant reconciliation statements including, operating expenses, insurance and taxes for the Property from _____ to _____ ; and
- (p) _____

(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.

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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 N/A days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than N/A by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TXR 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: <u>Oldham Goodwin Group, LLC</u>	Cooperating Broker: _____
Agent: <u>Clinton D. Oldham</u>	Agent: _____
Address: <u>2800 S Texas Avenue, Suite 401</u>	Address: _____
<u>Bryan, TX 77802</u>	
Phone & Fax: <u>(979)268-2000 (979)846-7020</u>	Phone & Fax: _____
E-mail: <u>Clint.Oldham@oldhamgoodwin.com</u>	E-mail: _____
License No.: <u>555666</u>	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:

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Principal Broker a total cash fee of:
 _____ % of the sales price.

Cooperating Broker a total cash fee of:
 _____ % of the sales price.

The cash fees will be paid in _____ County, Texas. Seller authorizes the title company 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) 30 days after the expiration of the feasibility period.

_____ (specific date).

See Addendum

(2) 7 days after objections made under Paragraph 6D 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 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) service, utility, 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 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 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 title company;

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- (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.

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 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.

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- (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 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, 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(4) 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. 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) except 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.~~

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- 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 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.
- 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 (TXR-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;

(TXR-1801) 4-1-18

Initialed for Identification by Seller DC __, __ and Buyer SC, __

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- (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.)

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 (TXR-1930) or (TXR-1946);
 - (3) Commercial Contract Financing Addendum (TXR-1931);
 - (4) Commercial Property Condition Statement (TXR-1408);
 - (5) Commercial Contract Addendum for Special Provisions (TXR-1940);
 - (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TXR-1906);
 - (7) Notice to Purchaser of Real Property in a Water District (MUD);
 - (8) Addendum for Coastal Area Property (TXR-1915);
 - (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1916);
 - (10) Information About Brokerage Services (TXR-2501); and
 - (11) Information About Mineral Clauses in Contract Forms (TXR-2509); and
 - (12) Addendum to Commercial Contract- Improved Property, Short Sale Addendum

Commercial Contract - Improved Property concerning 3891 S Traditions Dr, Bryan, TX 77808

(Note: Counsel for Texas REALTORS® has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by Texas REALTORS® 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 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 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 (*the Addendum for Coastal Area Property (TXR-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 (TXR-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. 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 (*the Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TXR-1906) may be used*).

Commercial Contract - Improved Property concerning 3891 S Traditions Dr, Bryan, TX 77808

- H. Section 1958.154, Occupatons 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. Brokers are not qualified to determine the credit worthiness of the parties.
- J. 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."
- K. 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 5, 2020, the offer will lapse and become null and void.



June 9, 2020

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: DCMP Real Estate I, LLC

Buyer: William Cole, Inc

By: _____
By (signature): DC
Printed Name: Doss Cunningham
Title: Manager

By: _____
By (signature): [Signature]
Printed Name: Spencer Clements
Title: President

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

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

Commercial Contract - Improved Property concerning 3891 S Traditions Dr. Bryan, TX 77808

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: Amy Clough
The Ellison Firm

Address: 302 Holleman Dr E
College Station TX 77840-7000

Phone & Fax: (979)696-9889 (979)693-8819

E-mail: Amy@ellisonlaw.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: Mike Gentry
West, Wells, Albritton & Gentry PC

Address: 1515 Emerald Plaza
College Station TX 77845

Phone & Fax: (979) 694-7000 (979) 694-8000

E-mail: mike.gentry@westwellsbkaw.com

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: _____



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

12-05-2011

SHORT SALE ADDENDUM

ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

3891 S Traditions Dr

Bryan

(Street Address and City)

A. This contract involves a "short sale" of the Property. As used in this Addendum, "short sale" means that:

- (1) Seller's net proceeds at closing will be insufficient to pay the balance of Seller's mortgage loan; and
- (2) Seller requires:
 - (a) the consent of the lienholder to sell the Property pursuant to this contract; and
 - (b) the lienholder's agreement to:
 - (i) ~~accept Seller's net proceeds in full satisfaction of Seller's liability under the mortgage loan;~~ and
 - (ii) provide Seller an executed release of lien against the Property in a recordable format.

B. As used in this Addendum, "Seller's net proceeds" means the Sales Price less Seller's Expenses under Paragraph 12 of the contract and Seller's obligation to pay any brokerage fees.

C. The contract to which this Addendum is attached is binding upon execution by the parties and the earnest money and the ^{13A} ~~Option Fee~~ must be paid as provided in the contract. The contract is contingent on the satisfaction of Seller's requirements under Paragraph A(2) of this Addendum (Lienholder's Consent and Agreement). Seller shall apply promptly for and make every reasonable effort to obtain Lienholder's Consent and Agreement, and shall furnish all information and documents required by the lienholder. Except as provided by this Addendum, neither party is required to perform under the contract while it is contingent upon obtaining Lienholder's Consent and Agreement.

D. If Seller does not notify Buyer that Seller has obtained Lienholder's Consent and Agreement on or before ~~1030~~ ^{13A} days after the contract is executed by both parties, this contract terminates and the earnest money will be refunded to Buyer. Seller must notify Buyer immediately if Lienholder's Consent and Agreement is obtained. For purposes of performance, the effective date of the contract changes to the date Seller provides Buyer notice of the Lienholder's Consent and Agreement (Amended Effective Date). ^{other than the deposit of earnest money and payment of independent consideration}

E. ~~This contract will terminate and the earnest money will be refunded to Buyer if the Lienholder refuses or withdraws its Consent and Agreement prior to closing and funding. Seller shall promptly notify Buyer of any lienholder's refusal to provide or withdrawal of a Lienholder's Consent and Agreement.~~

F. If Buyer has the unrestricted right to terminate this contract, the time for giving notice of termination begins on the effective date of the contract, continues after the Amended Effective Date and ends upon the expiration of Buyer's unrestricted right to terminate the contract under Paragraph 23.7B

G. For the purposes of this Addendum, time is of the essence. Strict compliance with the times for performance stated in this Addendum is required.

H. Seller authorizes any lienholder to furnish to Buyer or Buyer's representatives information relating to the status of the request for a Lienholder's Consent and Agreement.

I. If there is more than one lienholder or loan secured by the Property, this Addendum applies to each lienholder.

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[Signature]
President
Buyer William Cole, Inc

[Signature]

Seller DCMP Real Estate I, LLC

Buyer

Seller

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC No. 45-1. This form replaces TREC No. 45-0.

TREC NO. 45-1

ADDENDUM TO COMMERCIAL CONTRACT - IMPROVED PROPERTY

This Addendum to Commercial Contract - Improved Property (this "Addendum") is made and entered into as of the 8th day of June, 2020 (the "Effective Date"), by and between DCMP REAL ESTATE I, LLC, a Texas limited liability company (hereinafter referred to as "Seller"), and WILLIAM COLE, INC., a Texas corporation (hereinafter referred to as "Buyer").

WHEREAS, Seller and Buyer have entered into that certain Commercial Contract - Improved Property (the "Contract") regarding Lot 1, Block 1, The Traditions PH-22, an addition to the City of Bryan, Brazos County, Texas, according to a Plat thereof, recorded in Volume 11143, Page 276 of the Office of Records of Brazos County, Texas (the "Property").

WHEREAS, the parties have agreed to certain revisions to the Contract as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, it is hereby agreed as follows:

1. **Closing.** The Closing of the transaction contemplated by this Contract (the "Closing") shall take place on or before thirty (30) days after the expiration of the feasibility period. Buyer shall have the option to extend the Closing by forty-five (45) days by depositing an additional Fifty Thousand Dollars (\$50,000.00) of non-refundable Earnest Money with the Title Company.

2. **Casualty Loss.** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller will, within thirty (30) days after such damage occurs, provide Buyer with written notice ("Seller's Notice") of whether Seller will or will not restore such Property to its previous condition and Buyer may:

(a) terminate the Contract by providing written notice to Seller within 15 days after Seller's Notice and the earnest money, less any independent consideration under Paragraph 7B(1) of the Contract, will be refunded to Buyer, or

(b) accept at Closing: (i) such Property in its damaged condition; and (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's and Seller's lender's consent to the assignment.

3. **DISCLAIMER OF CONDITIONS.** EXCEPT FOR THE WARRANTY OF TITLE SET FORTH IN THE DEED, THE SALE OF THE PROPERTY IS MADE ON AN "AS IS, WHERE IS AND WITH ALL FAULTS" BASIS, AND BUYER EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF SELLER, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, TITLE (OTHER THAN THE SPECIAL WARRANTY OF TITLE WITH RESPECT TO THE REAL PROPERTY), HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. BUYER ACKNOWLEDGES THAT THE FOREGOING DISCLAIMER PROVISIONS REPRESENT THE RESULTS OF SPECIFIC NEGOTIATIONS BETWEEN THE PARTIES AND THAT SELLER

WOULD NOT BE WILLING TO SELL THE PROPERTY TO BUYER FOR THE SALE PRICE AND ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT UNLESS SUCH DISCLAIMER PROVISIONS WERE INCLUDED IN THIS AGREEMENT.

BUYER HEREBY EXPRESSLY ACKNOWLEDGES THAT IT HAS OR WILL HAVE, PRIOR TO THE END OF THE FEASIBILITY PERIOD, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY THE BUYER IN ORDER TO ENABLE THE BUYER TO EVALUATE THE PURCHASE OF THE PROPERTY. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF PROJECTS SUCH AS THE PROPERTY AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE, AND THAT OF BUYER'S CONSULTANTS, AND THAT BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME. BUYER DISCLAIMS RELIANCE UPON ALL ORAL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL FACTOR IN THE DETERMINATION OF THE SALES PRICE FOR THE PROPERTY. IT IS AGREED AND UNDERSTOOD THAT THE TERMS AND PROVISIONS OF THIS SECTION SHALL EXPRESSLY SURVIVE THE CLOSING AND NOT MERGE THEREIN AND BE INCLUDED IN THE DEED.

4. **Disclosure and Confidentiality.** Without the prior written consent of the other party, neither Buyer nor Seller shall make any disclosure to any person regarding the Sales Price under the Contract, other than its broker, attorney, lender, and accountant provided Buyer or Seller, as applicable, requires all such persons to hold the information in the same confidence. Notwithstanding the foregoing, after Closing, Seller and/or Buyer may issue a press release that the Property has been sold.

5. **Default.**

(a) Paragraph 15.A of the Contract is hereby amended and restated as follows:

"A. If Buyer fails to comply with this Contract and such non-compliance continues after Buyer's receipt of written notice and at least seven (7) days thereafter to cure such non-compliance, Buyer is in default and Seller may, as its sole and exclusive remedy, terminate this Contract and receive the earnest money, as liquidated damages and as Seller's sole remedy."

(b) Paragraph 15.C of the Contract is hereby amended and restated as follows:

"C. Except as provided in paragraph 15.B, if Seller fails to comply with this Contract and such non-compliance continues after Seller's receipt of written notice and at least seven (7) days thereafter to cure such non-compliance, Seller is in default and Buyer may either:

- (1) terminate this Contract and receive the earnest money, including any independent consideration described under Paragraph 7.B(1); or
- (2) enforce specific performance.

6. **Knowledge Limitation.** Notwithstanding anything to the contrary contained in the Contract or in this Addendum, all statements of Seller in Section 19 of the Contract are made based upon the current actual knowledge of Doss Cunningham and Manesh Patel without such individual having made any independent analysis, investigation or inquiry with respect to the matter so stated.

7. **Property Information.** It is agreed and understood that Seller shall have no responsibility or liability for the contents of any and all reports, studies, surveys, or investigations of the Property prepared by third parties and provided to Buyer in connection with the transaction contemplated by the Contract. All such reports, studies, surveys, and investigations provided by Seller to Buyer in connection herewith are provided solely to accommodate Buyer's requests for them. If such reports, studies, surveys, and investigations are found to misrepresent facts or otherwise to be in error in any way, Buyer waives any and all claims against Seller arising therefrom.

8. **Buyer's Right to Assign.** Notwithstanding anything to the contrary in the Contract, Buyer may, without Seller's consent, assign Buyer's rights under the Contract to any entity in which Buyer or Buyer's owner possesses an ownership interest or to an entity under common control with Buyer. Otherwise, the Contract may not be assigned by the Buyer, without the Seller's prior written consent.

9. **Lease.** Notwithstanding anything to the contrary, Seller will terminate all leases affecting the Property (other than oil and gas leases) on or prior to the Closing Date.

10. **Capitalized Terms.** All capitalized terms in this Addendum not defined herein shall have the meanings ascribed to them in the Contract.

11. **Ratification.** All terms and provisions of the Contract, not herein specifically amended, are ratified and affirmed by the parties hereto.

12. **Binding Effect.** The Contract and this Addendum and all of the terms, provisions and covenants contained therein shall apply to and shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. In the event of any conflict between the terms of this Addendum and the Contract, the terms of this Addendum shall control.

13. **Captions.** The captions employed in this Addendum and Contract are for convenience only and are not intended in any way to limit or amplify the terms and provisions of this Addendum and the Contract.

14. **Controlling Law.** This Addendum and the Contract shall be construed in accordance with the laws of the State of Texas, venue for any cause of action arising hereunder shall lie in Brazos County, Texas.

15. **Entire Agreement.** This Addendum and the Contract contains the entire agreement of the parties with respect to the subject matter hereof, and shall not be varied, amended, or superseded except by written agreement between the parties hereto.

16. **Survival.** The covenants, agreements, indemnities and representations and warranties contained in this Addendum and the Contract shall each survive the Closing and the delivery of the deed.

17. **Amended Effective Date.** The parties agree that Buyer's right to terminate the Contract referenced in paragraph F of the Short Sale Addendum expires Sixty (60) days after the Amended Effective Date.

SELLER:

BUYER:

DCMP REAL ESTATE I, LLC
a Texas limited liability company

WILLIAMS COLE, INC.
a Texas corporation

By: 

Doss Cunningham, Manager

By:  PRESIDENT

Spencer Clements

Commercial Contract - Improved Property concerning 3891 S Traditions Dr, Bryan, TX 77809

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: Amy Clough
The Ellison Firm
Address: 302 Holleman Dr E
College Station TX 77840-7000
Phone & Fax: (979)896-8889 (979)693-8819
E-mail: Amy@ellisonlaw.com

Buyer's attorney: Mike Gentry
West, Wells, Albritton & Gentry PC
Address: 1515 Emerald Plaza
College Station TX 77845
Phone & Fax: (779)694-7000 (779)694-8000
E-mail: mike.gentry@westwells.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 June 8, 2020 (effective date);
- B. earnest money in the amount of \$ 50,000.00 in the form of ck # 1613 on June 8, 2020.

Title company: Southland Title Address: 3800 Cross Park Drive
Bryan, TX 77802

By: Andrea B. Woodson Phone & Fax: 979-731-1900

Assigned file number (GF#): BL2009383 E-mail: andrea@southlandtitle.net

First Amendment to Commercial Contract – Improved Property

This First Amendment to Commercial Contract – Improved Property ("**Amendment**") is made and entered into as of August 21, 2020, by and between DCMP Real Estate I, LLC ("**Seller**") and William Cole, Inc. ("**Buyer**").

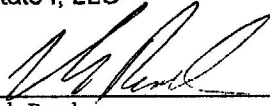
- A. WHEREAS, Seller and Buyer entered into that certain Commercial Contract – Improved Property effective June 8, 2020 with an Amended Effective Date of June 22, 2020 ("**Contract**") pursuant to which the Seller desires to sell and the Buyer desires to buy the real property therein described ("**Property**"); and
- B. WHEREAS, Buyer and Seller desire to amend the Contract in certain respects as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the Seller and Buyer agree as follows:

- 1. **Feasibility Period.** The first sentence of Paragraph 7.B. of the Contract is hereby amended to replace the reference to "60 days" with "74 days", and Paragraph 17 of the Addendum to Commercial Contract – Improved Property is hereby amended to replace the reference to "60 days" with "74 days", and any other reference to the Feasibility Period in the Contract is hereby amended as necessary in order to clarify that the Feasibility Period expires on Friday, September 4, 2020.
- 2. **Execution.** This Amendment may be executed in multiple counterparts and a fax or scanned and emailed copy of the signatures of the Seller and Buyer shall be effective for all purposes without the necessity of delivering an original signature.

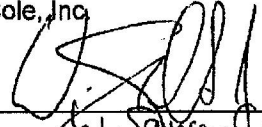
SELLER:

DCMP Real Estate I, LLC

By: 
 Name: Manish Patel
 Title: Owner

BUYER:

William Cole, Inc

By: 
 Name: William Cole, Jr.
 Title: President

Second Amendment to Commercial Contract – Improved Property

This Second Amendment to Commercial Contract – Improved Property ("Amendment") is made and entered into as of September 4, 2020, by and between DCMP Real Estate I, LLC ("Seller") and William Cole, Inc. ("Buyer").

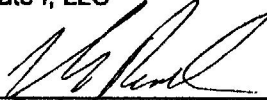
- A. WHEREAS, Seller and Buyer entered into that certain Commercial Contract – Improved Property effective June 8, 2020 with an Amended Effective Date of June 22, 2020, as amended by First Amendment dated August 21, 2020 ("Contract") pursuant to which the Seller desires to sell and the Buyer desires to buy the real property therein described ("Property"); and
- B. WHEREAS, Buyer and Seller desire to amend the Contract in certain respects as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the Seller and Buyer agree as follows:

- 1. **Feasibility Period.** The first sentence of Paragraph 7.B. of the Contract is hereby amended to replace the reference to "60 days" with "79 days", and Paragraph 17 of the Addendum to Commercial Contract – Improved Property is hereby amended to replace the reference to "60 days" with "79 days", and any other reference to the Feasibility Period in the Contract is hereby amended as necessary in order to clarify that the Feasibility Period expires on Wednesday, September 9, 2020.
- 2. **Earnest Money.** Paragraph 5.B. of the Contract is hereby deleted in its entirety, such that Buyer is not required to deposit additional Earnest Money after the expiration of the Feasibility Period, as previously contemplated.
- 3. **Execution.** This Amendment may be executed in multiple counterparts and a fax or scanned and emailed copy of the signatures of the Seller and Buyer shall be effective for all purposes without the necessity of delivering an original signature.


SELLER:

DCMP Real Estate I, LLC

By: 
 Name: Manish Patel
 Title: Owner

BUYER:

William Cole, Inc.

By: 
 Name: William Cole, Inc.
 Title: President

**THIRD AMENDMENT
TO COMMERCIAL CONTRACT – IMPROVED PROPERTY**

THIS THIRD AMENDMENT TO COMMERCIAL CONTRACT – IMPROVED PROPERTY (this “Amendment”) is made by and between DCMP REAL ESTATE I, LLC, a Texas limited liability company (“Seller”) and WILLIAM COLE, INC. (“Buyer”).

RECITALS

WHEREAS, Seller and Buyer entered into that certain Commercial Contract – Improved Property with an Effective Date of June 8, 2020, and that certain First Amendment to Commercial Contract – Improved Property dated August 21, 2020 and Second Amendment to Commercial Contract – Improved Property dated September 4, 2020 (“Contract”); and

WHEREAS, the parties desire to amend the Contract as described below.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and Buyer agree as follows:

AGREEMENT

1. Buyer hereby exercises its right to extend the Closing by forty-five (45) days to November 23, 2020. Buyer will deposit additional Earnest Money of \$50,000.00 with the Title Company as required by the Contract on or before October 9, 2020.

2. Except as expressly amended hereby, the terms and conditions of the Contract remain in full force and effect. The parties acknowledge, ratify and reaffirm the Contract as amended by this Amendment. All capitalized terms not defined herein shall have the meanings ascribed to them in the Contract. This Amendment may be executed in one or more counterparts, each of which shall constitute one and the same instrument, regardless of whether or not the signatures of all the parties hereto appear on any single counterpart hereof.

EXECUTED to be effective as of the 7th day of October, 2020.

SELLER:

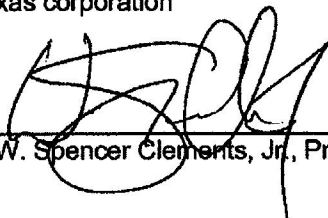
DCMP REAL ESTATE I, LLC
a Texas limited liability company

By: 

Manish Patel, Member

BUYER:

WILLIAM COLE, INC.
a Texas corporation

By: 

W. Spencer Clements, Jr., President

Fourth Amendment to Commercial Contract – Improved Property

This Fourth Amendment to Commercial Contract – Improved Property ("**Amendment**") is made and entered into as of October 30, 2020, by and between DCMP Real Estate I, LLC ("**Seller**") and William Cole, Inc. ("**Buyer**").

- A. WHEREAS, Seller and Buyer entered into that certain Commercial Contract – Improved Property effective June 8, 2020 with an Amended Effective Date of June 22, 2020, as amended by First Amendment dated August 21, 2020, Second Amendment dated September 4, 2020, and Third Amendment dated October 7, 2020 ("**Contract**") pursuant to which the Seller desires to sell and the Buyer desires to buy the real property therein described ("**Property**"); and
- B. WHEREAS, Buyer and Seller desire to amend the Contract in certain respects as hereinafter set forth.


NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the Seller and Buyer agree as follows:

- 1. **Property.** Paragraph 2.B.(7) of the Contract is hereby amended and restated as follows:
"all Seller's tangible personal property located on the Property that is used in connection with the Property's operations, including, without limitation, all of the fitness equipment identified on Exhibit A attached hereto, as well as all flooring currently located in the fitness area to the extent such flooring is not considered a fixture, in which case such flooring would convey to Buyer pursuant to Paragraph 2.B.(1) of the Contract."
- 2. **Sales Price.** Paragraph 3 of the Contract is hereby amended in order to increase the Sales Price by \$100,000.00, to a total Sales Price of \$9,200,00.00. The amount by which the Sales Price is increasing hereunder shall be applied to the cash portion of the Sales Price and the financed portion of the Sales Price pro rata in accordance with the percentages such portions bear to the total Sales Price prior to this Amendment."
- 3. **Agreement of the Parties.** Paragraph 22.D.(12) of the Contract is hereby amended to include "Exhibit A - Fitness Equipment" as an attachment to the Contract.
- 4. **Closing.** Paragraph 10E of the Contract is hereby amended to include the following: "(6) pay the sum of \$7,500.00 to Charlie Lima for services relating to the fitness equipment."
- 5. **Closing Date.** The Closing Date, as previously extended pursuant to the Third Amendment of the Contract, is hereby extended by an additional seven (7) days to November 30, 2020.
- 6. **Execution.** This Amendment may be executed in multiple counterparts and a fax or scanned and emailed copy of the signatures of the Seller and Buyer shall be effective for all purposes without the necessity of delivering an original signature.

[Signature Page Follows]

SELLER:

DCMP Real Estate I, LLC

By: 
Name: Manish Patel
Title: Member

BUYER:

William Cole, Inc


By: 
Name: Spencer Clements, Jr.
Title: President

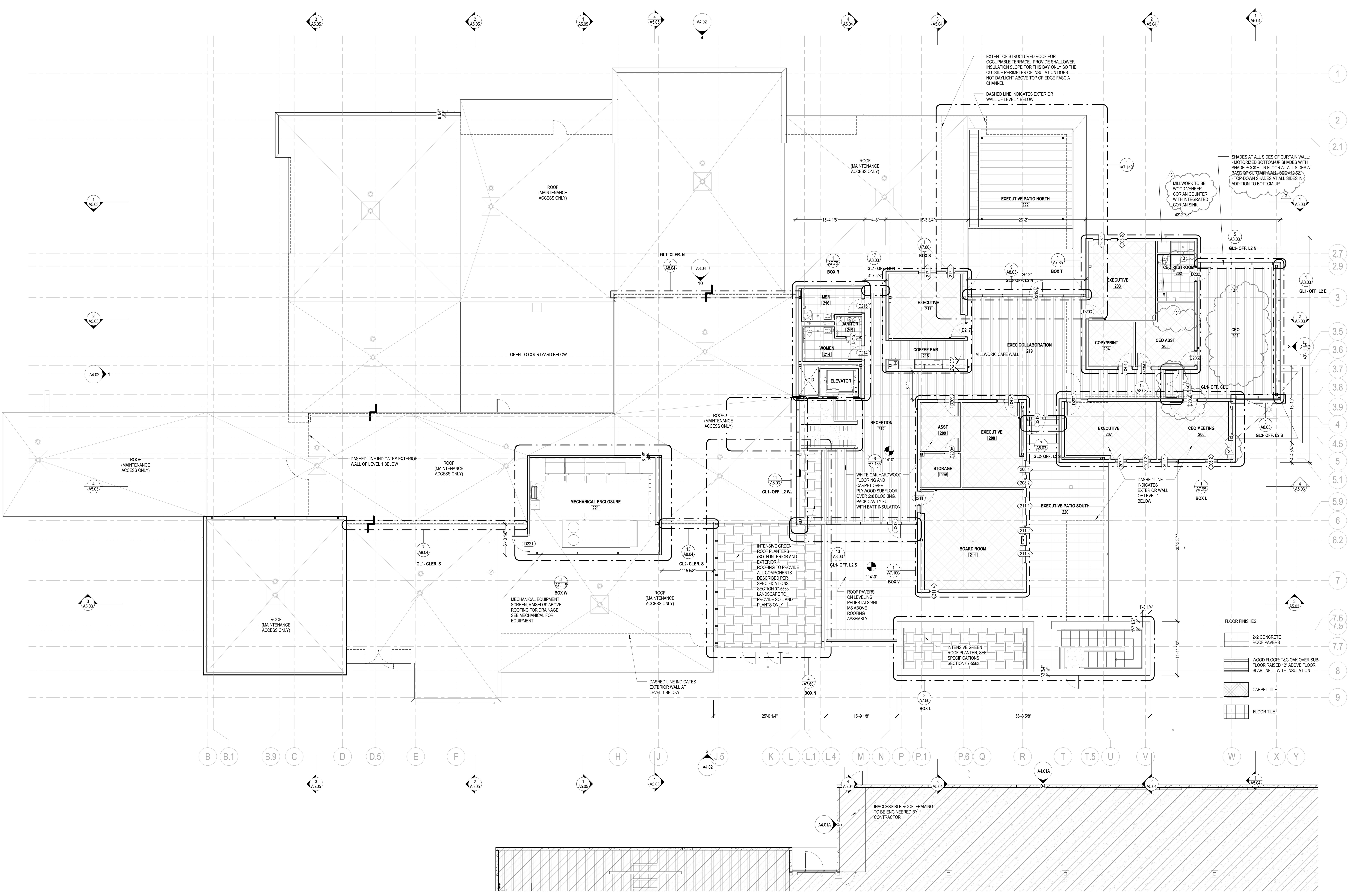
EXHIBIT A

Fitness Equipment

Category	Item	Qty
misc	Recovery Pump set w/ stand and chair (mens locker room)	1
cardio	Expresso Fitness HD Upright Bike HDU w/ screen	2
cardio	Precor EFX 546i Experience Elliptical Cross-Trainer w/ screen	2
cardio	Precor AMT 885 with Open Stride w/P80 Console w/ screen	1
cardio	Precor TRM 885 Treadmill w/P80 Console w/ screen	2
cardio	Woodway Curve Treadmill	1
cardio	JACOBS LADDER THE STAIRWAY CLIMBING MACHINE	1
cardio	JACOBS LADDER CLIMBING MACHINE	1
cardio	Keiser M3 Studio Cycle	1
free weights	70 pound kettlebell	1
free weights	106 pound Kettlebell	1
free weights	Rogue Yoke	2
free weights	Power Bar 45 pound	1
free weights	Rogue Hex Bar	1
free weights	AXLE Bar	1
free weights	SAFETY SQUAT BAR	1
free weights	ROGUE MG-1 MULTI GRIP BAR	1
free weights	CAMBER BAR	1
free weights	ROGUE FARMERS WALK HANDLES (pair)	1
free weights	100lb Troy USA Gray Olympic Weight Plate – O-100	4
free weights	Troy VTX Metal Plate (45 pounds)	25
free weights	Troy VTX Metal Plate (35 pounds)	15
free weights	Troy VTX Metal Plate (25 pounds)	17
free weights	Troy VTX Metal Plate (10 pounds)	36
free weights	Troy VTX Metal Plate (5 pounds)	49
free weights	Troy VTX Metal Plate (2.5 pounds)	11
storage	HAMMER STRENGTH BUMPER PLATE STORAGE	1
Storage	Metal Bumper plate storage rack	3
free weights	Hammer Strength Back Extension	1
misc	Tandem Vertical Challenger	1

free weights	Lock-Jaw Pro Olympic Barbell Collars Pair for bars crossfit lockjaw (pair)	4
free weights	Rogue Sled	1
free weights	Roge Dog Sled Bridge	1
free weights	Westside drag sled w/ straps	1
free weights	Rogue sandbag	1
free weights	Pair of rogue rings w/ straps	1
free weights	ROGUE BOX SQUAT BOX	1
machine	ELITEFTS™ LEG PRESS	1
machine	HAMMER STRENGTH V-SQUAT	1
machine	Hoist Dual Action Smith Machine (CF-3754)	1
machine	Life Fitness VR Standing Calf	1
machine	Body Solid Decline Olympic Bench	1
machine	Westside Barbell Force (Plyo) Swing	1
machine	Hammer Strength Plate Loaded SEATED CALF RAISE Gym Exercise Fitness Machine	1
machine	WESTSIDE BARBELL REVERSE HYPER W/ ROLLER ATTACHMENT	1
storage	Hammer Strength Commercial Weight Tree / Plates Storage	1
free weights	Hammer Strength Olympic Flat Bench	1
free weights	Hammer Strength Olympic Incline Bench	1
machine	Hammer Strength Plate-Loaded Iso-Lateral Incline Press	1
machine	Hammer Strength Iso lateral Decline Chest Press	1
machine	Life Fitness MJ5 Multi-Jungle Signature Series with attachments	1
free weights	ELITEFTS™ POWER RACK - ISO 3X3	1
free weights	ELITEFTS™ SIGNATURE POWER RACK SETUP with bench	1
machine	hammer strength ISO- Lateral Row	1
machine	Hammer Strength Iso lateral chest/back	1
free weights	Hammer Strength from Life Fitness Bicep / Preacher Curl	1
free weights	Dumbbells (75 pounds) - pair	1
free weights	Dumbbells (80 pounds) - pair	1
free weights	Dumbbells (85 pounds) - pair	1
free weights	Dumbbells (90 pounds) - pair	1
free weights	Dumbbells (95 pounds) - pair	1

free weights	Dumbbells (100 pounds) - pair	1
free weights	Dumbbells (105 pounds) - pair	1
free weights	Dumbbells (110 pounds) - pair	1
free weights	Dumbbells (115 pounds) - pair	1
free weights	Dumbbells (120 pounds) - pair	1
free weights	Dumbbells (125 pounds) - pair	1
free weights	Hammer Strength Two-Tier Dumbbell Rack	1
free weights	Hammer Strength Decline Abdominal Ab Sit-up Situp Bench	1
free weights	Hammer Strength from Life Fitness Chin / Dip / Leg Raise	1
machine	Life Fitness Pro 2 Assisted Dip/Chin	1
machine	Hammer Strength MTS Abdominal Crunch	1
machine	Life Fitness Pro2 SE Chest Press	1
machine	LIFE FITNESS SHOULDER PRESS SIGNATURE SERIES	1
machine	Life Fitness Pro2 Pec Fly / Rear Delt	1
machine	Life Fitness Pro2 TRICEPS EXTENSION Gym Exercise Weight Stack Tricep Machine	1
machine	Life Fitness Bicep Curl	1
machine	Life Fitness Pro 2 SE Seated Leg Extension	1
Pilates	Portable Ballet Bar - Barre on Both Sides	1
Pilates	BASI SYSTEMS PILATES CADILLAC-REFORMER COMBO	1
misc	Road bike Ozone 500	1
misc	Spalding NBA Portable Basketball System	1
machine	Life Fitness - Seated Leg Press Machine	1
machine	Life Fitness Pro 2 Prone Leg Curl	1
misc	Body Solid Strength Training Time Clock	2
free weights	Wooden box 30"x24"x20"	1



BRYAN JONES
TX REGISTRATION # 18225

SEAL 9/6/2013 6:35:14 PM

CURRENT SUBMISSION: ASI #20

#	DATE	SUBMISSION
A	2/18/2013	PERMIT
1	4/19/2013	CORE & SHELL
2	6/14/2013	CD UPDATE
3	9/6/2013	ASI #20

- FLOOR FINISHES:
- 2x2 CONCRETE ROOF PAVERS
 - WOOD FLOOR: T&G OAK OVER SUB-FLOOR RAISED 12" ABOVE FLOOR SLAB, INFILL WITH INSULATION
 - CARPET TILE
 - FLOOR TILE

GENERAL NOTES:
1. ROOFING: ROOF MEMBRANE OVER TAPERED INSULATION, 3" MIN OVER INTERIOR SPACE, SLOPE TO DRAIN @ 1/4" PER FOOT.

NUVITA HEADQUARTERS

PLAN - LEVEL 2 - OFFICE