



**TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

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

Seller: College Station Independent School District

Address: 1812 Welsh Ave, College Station, TX 77840-4800

Phone: (979) 764-5400

E-mail: mmartindale@csisd.org

Fax: _____

Other: _____

Buyer: DWS Development, Inc.

Address: P.O. Box 4508, Bryan, TX 77805

Phone: (979) 412-1386

E-mail: david@dwsdevelopment.com

Fax: _____

Other: _____

2. PROPERTY:

A. "Property" means that real property situated in Brazos County, Texas at 23.707 ac at SE intersection of Holleman Dr. and Deacon W Dr. (address) and that is legally described on the attached Exhibit A or as follows:

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

- (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
- (3) Seller's interest in all licenses and permits related to the Property.

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)
(If mineral rights are to be reserved an appropriate addendum should be attached.)*

3. SALES PRICE:

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

- (1) Cash portion payable by Buyer at closing \$ 3,356,200.00
- (2) Sum of all financing described in Paragraph 4 \$ _____
- (3) Sales price (sum of 3A(1) and 3A(2)) \$ 3,356,200.00

(TAR-1802) 1-1-16

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

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West, Webb, 1515 Emerald Plaza College Station, TX 77845
Phone: (979)694-7000

Fax: (979)694-8000

Gaines West

CSISD Haupt

Commercial Contract - Unimproved Property concerning

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

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

(2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ 3.25 per:

(i) square foot of total area net area.

(ii) acre of total area net area.

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

(i) public roadways;

(ii) rights-of-way and easements other than those that directly provide utility services to the Property; and

(iii) _____

(c) If the sales price is adjusted by more than 20.000 % of the stated sales price, either party may terminate this contract by providing written notice to the other party within 2 days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

A. Third Party Financing: One or more third party loans in the total amount of \$ _____ This contract:

(1) is not contingent upon Buyer obtaining third party financing.

(2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).

B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-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 to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ _____.

5. **EARNEST MONEY:**

A. Not later than 3 days after the effective date, Buyer must deposit \$ 10,000.00 as earnest money with University Title Company (title company) at 1021 University Dr. E, CS, TX 77845 (address) Kary Mersmann (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.

B. Buyer will deposit an additional amount of \$ _____ with the title company to be made part of the earnest money on or before:

(i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or

(ii) _____

Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY AND SURVEY:

A. Title Policy:

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

B. Survey: Within 2 days after the effective date:

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

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

- (1) ~~Within 0 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a~~

~~special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.~~

~~(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.~~

~~(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.~~

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: none.

B. Feasibility Period: Buyer may terminate this contract for any reason within 0 days after the effective date (feasibility period) by providing Seller written notice of termination. *(Check only one box.)*

(1) ~~If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ _____ 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.~~

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

C. Inspections, Studies, or Assessments:

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

(2) Buyer must:

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

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

D. Property Information:

- (1) Delivery of Property Information: Within _____ days after the effective date, Seller will deliver to Buyer: ~~(Check all that apply.)~~
- ~~(a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;~~
 - ~~(b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;~~
 - ~~(c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;~~
 - ~~(d) copies property tax statements for the Property for the previous 2 calendar years;~~
 - ~~(e) plats of the Property;~~
 - ~~(f) copies of current utility capacity letters from the Property's water and sewer service provider; and~~
 - (g) All available documentation has been delivered prior to the Effective Date.

- (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; and~~
 - ~~(c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.~~
- ~~This Paragraph 7D(2) survives termination of this contract.~~

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

8. LEASES:

- A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:
- (1) any failure by Seller to comply with Seller's obligations under the leases;
 - (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
 - (3) any advance sums paid by a tenant under any lease;

- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. ~~Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1038 - 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>Clark Isenhour Real Estate Services LLC</u>	Cooperating Broker: <u>none</u>
Agent: <u>John Clark</u>	Agent: _____
Address: <u>3838 S. College Bryan, Texas 77801</u>	Address: _____
Phone & Fax: <u>(979) 268-6840 (979) 268-6841</u>	Phone & Fax: _____
E-mail: <u>john@clarkisenhour.com</u>	E-mail: _____
License No.: <u>8999919</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 13 only if (1) is selected.)

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

Principal Broker a total cash fee of: <input checked="" type="checkbox"/> <u>2.000</u> % of the sales price. <input type="checkbox"/> _____	Cooperating Broker a total cash fee of: <input type="checkbox"/> _____ % of the sales price. <input type="checkbox"/> _____
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The cash fees will be paid in Brazos 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) _____ days after the expiration of the feasibility period.
 - July 29, 2016 (specific date).
 - _____
- (2) 7 days after objections made under Paragraph 6C have been cured or waived.
- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
 - (2) an assignment of all leases to or on the Property;
 - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
 - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
 - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the title company;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
 - (4) sign an assumption of all leases then in effect; and
 - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

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.)*
see Addendum to Contract attached hereto

13. SALES EXPENSES:

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

14. PRORATIONS:

- A. Prorations:
- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
 - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
 - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
- B. Rollback Taxes: ~~If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller.~~ If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental

payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue; or
(Check if applicable)

enforce specific performance, or seek such other relief as may be provided by law.

~~B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:~~

~~(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or~~

~~(2) extend the time for performance up to 15 days and the closing will be extended as necessary.~~

C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:

(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or

(2) enforce specific performance, ~~or seek such other relief as may be provided by law, or both.~~

16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or

B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:

(1) Seller and the sales price will be reduced by the same amount; or

(2) Buyer and the sales price will not be reduced.

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

18. ESCROW:

A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.

B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.

- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. Seller Buyer intend(s) to complete this transaction as a part of an exchange of like kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

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

- A. ~~Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR 1408).~~
- B. ~~Except as otherwise provided in this contract, Seller is not aware of:~~
 - ~~(1) any subsurface structures, pits, waste, springs, or improvements;~~
 - ~~(2) any pending or threatened litigation, condemnation, or assessment affecting the Property;~~
 - ~~(3) any environmental hazards or conditions that materially affect the Property;~~
 - ~~(4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;~~
 - ~~(5) whether radon, asbestos containing materials, urea formaldehyde foam insulation, lead based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;~~
 - ~~(6) any wetlands, as defined by federal or state law or regulation, on the Property;~~
 - ~~(7) any threatened or endangered species or their habitat on the Property;~~
 - ~~(8) any present or past infestation of wood destroying insects in the Property's improvements;~~
 - ~~(9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;~~
 - ~~(10) any condition on the Property that violates any law or ordinance.~~

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

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

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

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

22. AGREEMENT OF THE PARTIES:

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- D. Addenda which are part of this contract are: *(Check all that apply.)*
 - (1) Property Description Exhibit identified in Paragraph 2;
 - (2) Commercial Contract Financing Addendum (TAR-1931);
 - (3) Commercial Property Condition Statement (TAR-1408);
 - (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
 - (5) Notice to Purchaser of Real Property in a Water District (MUD);
 - (6) Addendum for Coastal Area Property (TAR-1915);
 - (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
 - (8) Information About Brokerage Services (TAR-2501); and
 - (9) Special Provisions Addendum

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

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

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

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

25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you

Commercial Contract - Unimproved Property concerning

will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.
- H. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

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

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.**

College Station Independent School
Seller: District

Buyer: DWS Development, Inc.

By: _____

By (signature): Valerie Tschien

Printed Name: Valerie Tschien

Title: President, Board of Trustees

By: _____

By (signature): _____

Printed Name: _____

Title: _____

By: _____

By (signature): David W. Scarborough

Printed Name: DAVID W. SCARBOROUGH

Title: PR. ASST.

By: _____

By (signature): _____

Printed Name: _____

Title: _____

AGREEMENT BETWEEN BROKERS

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay _____ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- \$ _____, or
- _____ % of the sales price, or
- _____ % of the Principal Broker's fee.

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: West, Webb, Allbritton & Gentry Buyer's attorney: _____

Mike Gentry _____

Address: 1515 Emerald Plaza Address: _____

College Station TX 77845 _____

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

E-mail: mike.gentry@westwebblaw.com E-mail: _____

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 July 7, 2016 (effective date);
- B. earnest money in the amount of \$ 10,000 in the form of CC on July 7, 2016.

Title company: UTC Address: 1021 University Dr.

Vicki Smith College Station TX 77840

By: _____ Phone & Fax: 979-260-9818

Assigned file number (GF#): 161608 E-mail: _____

EXHIBIT A

Property

**METES AND BOUNDS DESCRIPTION
OF A
23.707 ACRE TRACT
CRAWFORD BURNETT LEAGUE, A-7
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE CRAWFORD BURNETT LEAGUE, ABSTRACT NO. 7, COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING THE REMAINDER OF A CALLED 27.017 ACRE TRACT AS DESCRIBED BY A DEED TO THE COLLEGE STATION INDEPENDENT SCHOOL DISTRICT RECORDED IN VOLUME 9626, PAGE 76 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD FOUND ON THE NORTHWEST LINE OF A CALLED 23.00 ACRE TRACT DESCRIBED AS TRACT TWO BY A DEED TO HENRY P. MAYO AND WIFE, SANDRA K. MAYO RECORDED IN VOLUME 1253, PAGE 878 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS, MARKING THE EAST CORNER OF SAID REMAINDER OF 27.017 ACRE TRACT AND THE END OF THE SOUTHWEST LINE OF TOWERS PARKWAY (67' R.O.W.), FOR REFERENCE A 1/2 INCH IRON ROD FOUND MARKING THE WEST CORNER OF THE BARRACKS II SUBDIVISION, PHASE 202, ACCORDING TO THE PLAT RECORDED IN VOLUME 13041, PAGE 149 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, BEARS: N 41° 21' 39" E FOR A DISTANCE OF 868.60 FEET;

THENCE: S 41° 21' 39" W ALONG THE COMMON LINE OF SAID REMAINDER OF 27.017 ACRE TRACT AND SAID 23.00 ACRE TRACT, AT 559.47 FEET A 1/2 INCH IRON ROD FOUND NEAR THE COMMON CORNER OF SAID 23.00 ACRE TRACT AND A CALLED 33.52 ACRE TRACT AS DESCRIBED BY A DEED TO OAK CREEK LLP RECORDED IN VOLUME 4030, PAGE 98 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, BEARS: S 48° 38' 21" E FOR A DISTANCE OF 0.25 FEET, CONTINUE ON ALONG THE COMMON LINE OF SAID REMAINDER OF 27.017 ACRE TRACT AND SAID 33.52 ACRE TRACT FOR A TOTAL DISTANCE OF 1438.12 FEET TO A 1/2 INCH IRON ROD SET ON THE EAST LINE OF HOLLEMAN DRIVE MARKING THE SOUTH CORNER OF THIS HEREIN DESCRIBED TRACT, FOR REFERENCE A FENCE CORNER POST FOUND BEARS: N 14° 38' 34" W FOR A DISTANCE OF 1.32 FEET;

THENCE: N 22° 02' 42" W ALONG THE EAST LINE OF HOLLEMAN DRIVE FOR A DISTANCE OF 1014.85 FEET TO A 1/2 INCH IRON ROD SET ON THE SOUTHEAST LINE OF DEACON DRIVE WEST (85' R.O.W.) MARKING THE WEST CORNER OF THIS HEREIN DESCRIBED TRACT;

THENCE: ALONG THE SOUTHEAST LINE OF DEACON DRIVE WEST FOR THE FOLLOWING CALLS:

N 67° 52' 32" E FOR A DISTANCE OF 30.24 FEET TO A 1/2 INCH IRON ROD SET MARKING THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 553.50 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25° 02' 43" FOR AN ARC DISTANCE OF 241.95 FEET (CHORD BEARS: N 55° 26' 04" E - 240.03 FEET) TO A 1/2 INCH IRON ROD SET MARKING THE END OF SAID CURVE;

N 42° 56' 01" E FOR A DISTANCE OF 712.55 FEET TO A 1/2 INCH IRON ROD SET MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89° 20' 41" FOR AN ARC DISTANCE OF 38.98 FEET (CHORD BEARS: N 87° 36' 22" E - 35.15 FEET) TO A 1/2 INCH IRON ROD SET ON THE SOUTHWEST LINE OF TOWERS PARKWAY MARKING THE END OF SAID CURVE;

THENCE: S 47° 43' 18" E ALONG THE SOUTHWEST LINE OF TOWERS PARKWAY FOR A DISTANCE OF 790.76 FEET TO THE POINT OF BEGINNING CONTAINING 23.707 ACRES OF LAND AS SURVEYED ON THE GROUND MAY, 2016. BEARING SYSTEM SHOWN HEREIN IS BASED ON THE DEED CALL BEARINGS OF THE BARRACKS II SUBDIVISION, PHASE 100 (10570/293) AND PHASE 202 (13041/149). SEE PLAT PREPARED MAY 2016 FOR MORE DESCRIPTIVE INFORMATION.

**BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502**

\\JOBS\16-386\16-386.docx

Addendum to Commercial Contract – Unimproved Property

This Addendum to Commercial Contract – Unimproved Property (“**Addendum**”) is attached to and incorporated into that certain Commercial Contract – Unimproved Property (“**Contract**”) by and between College Station Independent School District (“**Seller**”) and DWS Development, Inc. (“**Buyer**”).

- A. Whereas, pursuant to the Contract the Seller desires to sell and the Buyer desires to buy the real property therein described being approximately 23.707 acres of land in Brazos County, Texas (“**Property**”); and
- B. Whereas, Buyer and Seller desire to set forth additional terms and conditions to the Contract.

Now, therefore, in consideration of the mutual covenants herein expressed and as set forth in the Contract, the Seller and Buyer agree as follows:

1. **Conflict.** In the event of any conflict or ambiguity as between the Contract and this Addendum, this Addendum shall control.
2. **Zoning.** Notwithstanding Paragraph 6.C of the Contract, Buyer shall not have the right to make a title objection as a result of the zoning designation of the Property.
3. **Broker Fee.** The fee payable to Principal Broker at closing pursuant to Paragraph 9.B. of the Contract shall be 2.000% of the sales price if there is no Cooperating Broker. In the event there is a Cooperating Broker, such Cooperating Broker shall receive a fee of 2.000% of the sales price, such that Seller shall pay a total fee of 4.000% of the sales price to be divided evenly among the Principal Broker and the Cooperating Broker.
4. **AS IS.** The special warranty deed described under Paragraph 10.C of the Contract shall contain “AS IS” language as set forth on Exhibit A attached hereto and made a part hereof for all purposes.
5. **No Tax Liability.** In no event shall Seller be responsible for taxes of any kind related to the Property, including rollback taxes, whether such taxes are attributable to periods of time prior to the Closing, or following the Closing.
6. **Closing Contingency.** The obligation of Seller to close on the sale of the Property is contingent on the prior or simultaneous acquisition by Seller of certain other real property located at the northwest corner of Holleman Drive and Rock Prairie Road (“**Mission Ranch Tract**”) at a price and terms acceptable to Seller, in Seller’s sole and absolute discretion.
7. **Execution.** This Addendum 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.
8. **Contract Effective Date.** This Addendum is executed contemporaneous with the Contract and shall have the same effective date as the Contract.

[Signature Page Follows]

Handwritten signatures and initials. On the left, there is a signature that appears to be 'WJG'. To the right, there is a large circular scribble containing the initials 'DWS'.

SELLER:

College Station Independent School District

By: Valerie Joeken
Name: Valerie Joeken
Title: President, Board of Trustees

BUYER:

DWS Development, Inc.

By: [Signature]
Name: DAVID W. SCARWATER
Title: President

EXHIBIT "A" to SPECIAL PROVISIONS ADDENDUM

ADDENDUM TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY
College Station Independent School District, as Seller and DWS Development, Inc., as Buyer
23.707 Acres, Brazos County, Texas

The Property shall be sold to Buyer subject to the following provisions, each of which shall survive closing and shall be incorporated into the warranty deed:

As a material part of the consideration for this Contract, Seller and Buyer agree that Buyer is taking the Property "**AS IS**" with any and all latent and patent defects and that there is no warranty by Seller that the Property has a particular financial value or is fit for a particular purpose. Except as provided in the Contract and the documents executed at Closing, Buyer acknowledges and stipulates that Buyer is not relying on any representation, statement, or other assertion with respect to the Property condition but is relying on Buyer's examination of the Property. Except as provided in the Contract and the documents executed at Closing, Buyer takes the Property with the express understanding and stipulation that there are no express or implied warranties.

Buyer hereby acknowledges that Buyer is purchasing the Property, and the Property is hereby conveyed to Buyer "**AS IS**," "**WHERE IS**" and "**WITH ALL FAULTS**", and specifically and expressly without any warranties, representations, or guarantees, either express or implied, of any kind, nature, or type whatsoever from or on behalf of Seller, except for those expressly set forth herein as a warranty under this Contract and the documents executed at Closing. Buyer acknowledges that Buyer has not relied, and is not relying, on any information, document, sales brochures, or other literature, maps or sketches, projection, pro forma, statement, representation, guarantee, or warranty (whether express or implied, or oral or written, or material or immaterial) that may have been given by, or made by, or on behalf of Seller. Except as provided in the Contract and the documents executed at Closing, Seller has not, does not, and will not with respect to the Property, make any warranties or representations, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of condition, merchantability, habitability, or fitness for a particular use, or with respect to the value, profitability or marketability of the Property.

Buyer has had an adequate opportunity to make such legal, factual, and other inquiries and investigations as it deems necessary, desirable, or appropriate with respect to the Property. Such inquiries and investigations of Buyer shall be deemed to include, but shall not be limited to, any leases and contracts pertaining to the Property, the physical components of all portions of the Property, the condition of the Property, such state of facts as an accurate survey and inspection would show, the present and future zoning ordinances, resolutions, and regulations of the city, county, and state where the Property is located, and the value and marketability of the Property.

Without in any way limiting the generality of the preceding, Buyer specifically acknowledges and agrees that Buyer hereby waives, releases, and discharges any claim Buyer has, might have had, or may have against Seller with respect to the condition of the Property, whether such condition is patent or latent, Buyer's ability or inability to obtain or maintain building permits, either temporary or final certificates of occupancy, or other licenses for the use or operation of the Property and/or certificates of compliance for the Property, the actual or potential income or profits to be derived from the Property, the real estate taxes or assessments now or hereafter payable thereon, the compliance with any environmental protection, pollution or land use laws, rules, regulations or requirements, and any other state of facts which exist with respect to the Property.

Buyer or anyone claiming by, through or under Buyer, hereby fully releases Seller, Seller's employees, officers, directors, representatives, attorneys and agents from any and all claims that Buyer may now have or hereafter acquire against Seller, and Seller's employees, officers, directors, representatives, attorneys and agents for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any conditions affecting the Property. Buyer further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and unsuspected claims, damages and causes of action. This covenant releasing Seller shall be a covenant running with the Property and shall be binding upon Buyer.

The provisions of this Exhibit "A" survive the Closing or any earlier termination of this Contract.

Initialed for Identification by Seller 

Initialed for Identification by Buyer 