

## **SPECIAL PROVISIONS ADDENDUM TO CONTRACT AND CONTRACT AMENDMENT**

This is a Special Provisions Addendum and Contract Amendment ("Addendum") to Earnest Money Contract ("Contract") by and between AGCAT REALTY, LLC as "Seller" and \_\_\_\_\_ as "Buyer" pertaining to the property located at:

**Lot 18, Bayou Woods Addition, in the Robert Hall Survey, Galveston County, Texas and known locally as 5059 Winding Way, Dickinson, TX 77539 ("Property").**

NOTWITHSTANDING anything in the Contract to the contrary, Seller and Buyer hereby agree that the following special provisions are hereby made a part of and are to be included in the Contract as it originally set forth therein. In the event of any inconsistency between the terms of the contract and the terms of this addendum, this Addendum shall control for all purposes.

1. Buyer acknowledges that prior to the Execution Date of the Contract it has or will make its own physical inspection of the Property itself and by experts in the specific fields necessary and shall satisfy itself as to the condition of the Property and Buyer's intended use thereof to include, but not limited to, existence or availability of utilities, applicable zoning ordinances, restrictions, and governmental laws, rules and regulations pertaining to the intended use of the Property. Buyer acknowledges that before the Execution Date of the Contract, it will satisfy itself as to the condition of the Property with respect to Buyer's intended use.

Buyer further acknowledges and agrees that any information relied upon by Buyer with respect to the Property was obtained by Seller from a variety of sources, and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Seller is not liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person in Seller. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for therein is made on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis, and Buyer expressly acknowledges that Seller has not made, and does not make, any warranty or representation, express or implied, or arising by operation of law or otherwise, including, but not limited to, any warranty of condition, title (other than the Special Warranty of Title with respect to the land and the improvements), habitability, merchantability or fitness for a particular purpose with respect to the Property or any portion thereof. It is understood and agreed that the price has been adjusted by prior negotiation to reflect that the Property is being sold by Seller and purchased by Buyer in full understanding and acceptance of the foregoing conditions and qualifications. At the closing, the Special Warranty Deed from Seller shall include the foregoing disclaimer of warranties by Seller and that the Property is transferred to Buyer "AS IS, WHERE IS" and "WITH ALL FAULTS".

Additionally, Buyer further acknowledges that Seller may have limited knowledge of the Property site and may not have made a personal visit to the property at all prior to listing the property for sale. Seller is an investment entity who purchases property in volume and often has limited or no knowledge of the site other than what is available in the public records, through third parties and on the internet. Therefore, Buyer acknowledges that Seller asserts it has disclosed the condition of the Property to the best of its abilities based on its limited knowledge of the site. Buyer additionally acknowledges that it has received

the Seller's Property Disclosure and performed its own inspection and or inspection by experts, in the specific fields necessary, of the site prior to the Execution Date of the Contract, and except in the event the Contract contains an option period, then the option shall control until its expiration, then Buyer shall unconditionally waive the right to terminate the contract or make any and all claims against Seller, and Seller's shareholders, owners, directors, agents, officers, partners (both general and limited), members, managers, other beneficial owners, parents and subsidiaries, employees, agents, representatives, legal representatives, heirs, successors, and assigns, and each of them, of any from all claims, demands, causes of action, damages, costs, expenses, actual attorney fees, losses and/or liabilities in law or in equity, of every kind and nature whatsoever arising out of, relating to or in connection with, all statements within the disclosure or known or unknown physical characteristics of the Property should Buyer determine any characteristic of the property differs from that of what the disclosure states.

2. Buyer acknowledges that any and all measurements of the Property or its improvements thereon used in the marketing of the Property are estimates and shall be verified by Purchaser prior to the Execution date of the Contract. Additionally, Purchaser acknowledges it has made its own measurements of the Property itself or by experts in the specific field, and has satisfied itself to those prior to the Execution Date of the Contract.

3. Buyer hereby acknowledges and agrees that the deed to be executed and delivered under the Contract shall be a Special Warranty Deed and not a general warranty deed as specified elsewhere in the Contract. Additionally, Buyer agrees to sign Grantee's acknowledgement of the deed at the time of the closing of the sale.

4. As a part of this transaction the Seller agrees to credit Buyer its pro-rata share of the current year tax liability, and Buyer is responsible for the whole current year tax liability when it is due by the property taxing authorities. In the event the current year tax roll value has not been certified by the Effective Date of the Contract, the prior year certified tax roll levy shall be used to prorate the property tax valuation. Additionally, Buyer and Seller jointly agree that the sole responsibility of any and all prior or current years roll back tax or supplemental liability assessed or identified by the authorities who have jurisdiction to levy any and all taxes against the property shall transfer to the Buyer on the date of the closing of the sale.

5. Buyer hereby acknowledges the Seller's right to immediately terminate the contract, in the event the title of the property is found by escrow agent, title examiner, or insurance underwriter to have defect (including but not limited to partial vesting, title "cloud" or attached voluntary or involuntary liens) that Seller is unable to cure within a reasonable amount of time, or other encumbrances preventing conveyance of whole, clear and insurable title at the time title commitment is issued by escrow company. Should the Seller elect to terminate the contract under this provision, Buyer shall receive earnest money deposit upon cancelation request by Seller. Seller's cancelation request shall be signed by Seller only under this election and be delivered to escrow agent by email or regular mail.

6. Notwithstanding any provision contained in paragraph 15 of the Contract to the contrary, if Seller fails to perform the Closing of the Sale for any reason without reservation, Seller will be conclusively presumed to be in Default and the Contract shall automatically terminate and Buyer shall receive the earnest money, thereby releasing both parties from the Contract. Buyer is prohibited from seeking Specific Performance under the Contract, filing a lis pendens or other similar notice constituting a cloud against the Property.

7. If the Property is located in a special flood hazard area (Zone A or Z), this means that the Property is situated in an area that has been identified by the United States Government as an area that may possibly flood. The area where the Property is located may have already flooded, and/or the Property is a candidate for flooding. Accordingly, prior to the Effective Date of the Contract and this Addendum, Buyer has performed its diligence regarding the Property and its proximity to or location in a flood zone and agrees to accept the Property with any and all related restrictions in place.

8. Properties around the property are used for a variety of purposes and some of the uses can cause noise (for example: airports, railways, highways, restaurants, bars, schools, arenas and construction). Buyer has, prior to the Effective Date of the Contract, had the opportunity to drive and review the area around the Property at various times/days and finds the level of noise at the Property acceptable.

9. Properties located in Historic or Conservation Overlay Districts may have restrictions on use and architecture of the properties. Prior to the Effective Date of the Contract the Buyer has performed its diligence regarding the Property and its proximity to or location in a Historic and/or Conservation Districts and has satisfied itself to the result of that and agrees to accept the Property with any and all Overlay District requirements.

10. Buyer acknowledges the inherent risks associated with purchasing an investment grade property such as the subject Property and accepts those risks. Additionally, Buyer acknowledges that the Seller has made no claims about the potential profitability or loss that they may experience by purchasing the Property.

11. The Contract is a "cash" contract and is not contingent on Buyer obtaining financing. Should Buyer choose to use financing of any sort to purchase the Property, no concessions shall be made by the Seller and no terms of the Contract shall be modified.

12. Listing Realtor is related to principle of selling entity.

13. If the Property contains improvements thereon, the Buyer acknowledges that it has received the Property Disclosure according to the Texas Property Code in the event that it is required.

14. Buyer **HAS NOT RECEIVED** a recent acceptable property boundary survey.

15. Alternative Dispute Resolution. Buyer agrees that any dispute, controversy or claim arising out of or relating in any way to the Property or this agreement or any right, duty, obligation, act or omission which touches or concerns this Agreement, including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach of this agreement shall be exclusively resolved by binding arbitration. The arbitration shall be conducted by a single arbitrator in Bexar County, Texas. The Arbitrator shall be a retired/former District Judge of the State of Texas. The laws of the State of Texas shall be applied in any arbitration proceeding without regard to principles of conflict of laws. Any discovery and the limits of said discovery shall be within the sole discretion of the arbitrator, whose decision regarding the amount and scope of discovery shall be final and not subject to review. In any arbitration proceedings, each party will be responsible for its own attorney fees and incurred costs notwithstanding any law to the contrary. The arbitrator shall have the authority to award all relief that a District Court in Texas could award excepting arbitration costs and attorney fees, which shall be borne by the party paying the same. The cost of the arbitration and any fees charged by the arbitrator shall be

borne equally by the parties. To the extent that the Parties cannot agree upon an Arbitrator, then: (1) Buyer shall select a single Arbiter; (2) Seller shall select a single Arbiter; and (3) the Arbiters selected by Buyer and Seller shall select an arbiter to resolve the substance of the dispute. If any party fails to properly select an Arbitrator as is set forth herein within 10 days of demand to select by the other party, then the Arbitrator selected by the other party shall be the arbitrator of the matter.

The parties further agree that if any party seeks injunctive relief (in conjunction with any other type of relief) in a Court of competent jurisdiction, and to the extent that a District Court provides any type of Temporary Restraining Order and/or Injunction that any Arbitrator who is subsequently appointed shall have the authority to review the Restraining Order and/or Injunction, including the dissolving of the same.

Any relief issued by the Arbitrator may be reduced to a Judgment in the Court of competent jurisdiction and all writs/processes/orders which may be necessary to enforce the Arbitration Award/Judgment are available to the requesting party.

16. Effective as of the day of the Effective Date of the Contract, Buyer, and their successors and assigns, and their direct and indirect subsidiaries, affiliates, joint ventures, attorneys, associates and agents, do knowingly, voluntarily and intentionally agree to, and do hereby release, acquit, and forever discharge the Seller from any and all claims to include but not limited to fraud, and deceptive trade practices, and demands, actions, causes of action, rights, or remedies, of whatsoever nature or character, at law or in equity, known or unknown, matured or inchoate, that have accrued relating to the Property, any interest therein (contractual or otherwise), and the owners thereof.

17. Buyer agrees that it will not hereafter, and shall not, whether directly or indirectly, utter, publish, disclose or convey to any person, publication, or any individual or organization, which may or may not have any interest or purports to have any interest in the Property or the Agreement, any negative or disparaging comment about the other, or do anything that a reasonable person would expect to diminish, disparage or constrain the good will or good reputation of the other, their business practices, or those of their agents, employees, representatives, direct and indirect subsidiaries, affiliates, joint venturers, heirs, successors and assigns.

18. Each party hereto represents and warrants that he, she, or it has not heretofore assigned, transferred or hypothecated, or purported to assign, transfer or hypothecate, to any person or entity any claim or cause of action herein released, or any interest therein.

19. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

20. This Special Provisions Addendum to Contract, and Contract Amendment together with the Contract and any valid amendments executed thereafter represents the final agreement between the Buyer and Seller and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements by the Buyer and Seller. There are no unwritten oral agreements between the Buyer and Seller.

21. All representations, warranties, waivers, releases, and indemnifications contained in this Special Provisions Addendum to Contract, and Contract Amendment shall survive closing of the sale of the Property or termination of this Agreement.

22. All other terms of the Contract not modified herein are hereby ratified, affirmed and approved.

X  Date: 12/16/2024

By: **RYAN MACDONALD**

MEMBER/MANAGER AGCAT REALTY, LLC

As: SELLER (AND/OR ASSIGNOR)

X \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_

As: BUYER #1 (AND/OR ASSIGNEE)

X \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_

As: BUYER #2 (AND/ OR ASSIGNEE)