

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (Agreement) is made on the ____ day of _____ 20__ (Effective Date), by and between CARL L. WALTMAN AND PEGGY WALTMAN, whose address is 4393 Beechwood Lake Dr Naples, FL 34112-6157 (Seller), and LAKE ORION DOWNTOWN DEVELOPMENT AUTHORITY whose address is 118 N Broadway St., Lake Orion MI 48362 (Purchaser).

For valuable consideration received, the parties agree as follows:

1. *Agreement for Purchase and Sale.* Seller shall sell, transfer, and convey to Purchaser, and Purchaser shall purchase from Seller, subject to, and on the terms and conditions set forth in this Agreement, the following (collectively, the "Property"):

- (a) Certain land situated in the City of Pontiac, Oakland County, Michigan, and more particularly described as

T4N, R10E, SEC 11 ASSESSOR'S REPLAT OF DECKERS ADD THAT PART OF LOT 88 LYING SLY OF LINE DESC AS BEG AT PT DIST S 03-44-12 E 87.94 FT FROM NW LOT COR, TH E 148.33 FT, TH S 21-00-00 E 40 FT, TH E 143 FT TO END AT SE LOT COR 10/26/87 FR 008T4N, R10E, SEC 11 ASSESSOR'S REPLAT OF DECKERS ADD THAT PART OF LOT 88 LYING SLY OF LINE DESC AS BEG AT PT DIST S 03-44-12 E 87.94 FT FROM NW LOT COR, TH E 148.33 FT, TH S 21-00-00 E 40 FT, TH E 143 FT TO END AT SE LOT COR 10/26/87 FR 008

Parcel No. OL-09-11-228-019

together with the buildings and all other improvements of every kind and nature, all fixtures of every kind and nature located in or on the Land, or any such improvements and all appurtenances and hereditaments thereto (collectively, the "Improvements").

- (b) All of Seller's rights, title, and interest in and to all plans, specifications, drawings, and other architectural or engineering data relating to the Property (collectively, the "Plans")
- (c) Seller shall provide a survey of the property as a contingency of closing
- (d) All warranties, guaranties, sureties, and indemnifications received by or inuring to the benefit of Seller in connection with the ownership, improvement, alteration, repair, restoration, replacement, maintenance, operation, or use of the Property or any portion of it (collectively, the "Warranties")
- (e) All other claims and causes of action of Seller relating to the design, construction, maintenance, repair, restoration, replacement, improvement, use, damage, or destruction of the Property or any portion of it.

2. *Purchase Price.* The purchase price for the Property (Purchase Price) shall be **Seven Thousand Dollars (\$7,000.00)**, payable in cash at the Closing.

- (a) As security for closing, an earnest money deposit of \$2,000.00 shall be held in escrow, pursuant a standard escrow agreement, at Old Woodward Title Co, or its affiliated entity. The escrowed purchase funds shall be applicable to the purchase price at closing and non-refundable as set forth herein.

3. *Condition of Property/Right to Inspect.*

(a) Purchaser acknowledges that, except as otherwise set forth in this Agreement or in any of the Closing documents, Seller has not made, does not make, and specifically negates and disclaims any and all representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to (i) the value, nature, quality, or condition of the Property, including, without limitation, the water, soil, and geology or structural elements, or foundations; (ii) the suitability of the Property for any or all of Purchaser's activities and uses; (iii) the compliance of or by the Property with any laws, codes, rules, ordinances, regulations, orders, decrees, or other requirements of any applicable governmental authority or body (collectively, the "Laws"), including, without limitation, compliance with any applicable zoning ordinance; (iv) the habitability, marketability, profitability, or fitness for a particular purpose of the Property; (v) to the best of Seller's knowledge, existence in, on, under, or over the Property of any Hazardous Materials (defined below); or (vi) any other matter with respect to the Property. Additionally, no person acting on behalf of Seller is authorized to make, and by execution of this Agreement Purchaser acknowledges that no person has made, any representation, agreement, statement, warranty, guaranty, or promise regarding the Property, and no representation, warranty, agreement, guaranty, statement, or promise, if any, made by any person acting on behalf of Seller shall be valid or binding on Seller unless expressly set forth in this Agreement or in any of the Closing documents. "Hazardous Materials" means any substance that is or contains (A) any "hazardous substance" as now or hereafter defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 USC 9601 et seq.), or any regulations promulgated under CERCLA; (B) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (RCRA) (42 USC 6901 et seq.) or regulations promulgated under RCRA; (C) any substance regulated by the Toxic Substances Control Act (TSCA) (15 USC 2601 et seq.); (D) gasoline, diesel fuel, or other petroleum hydrocarbons; (E) asbestos and asbestos-containing materials in any form, whether friable or nonfriable; (F) polychlorinated biphenyls; (G) radon gas; and (H) any additional substances or materials that are now or hereafter classified or considered to be hazardous or toxic under any Laws.

(b) Purchaser acknowledges that the property is being sold as is.

(c) This contract is completely contingent upon the purchaser completing, at purchaser's expense, a satisfactory inspection of the premises. If purchaser is not satisfied for any reason and advises the seller within thirty (30) business days from the effective date hereof, this contract shall be null and void and the closing deposit shall be immediately returned to purchaser. If purchaser does not act on this contingency within thirty (30) business days, this contingency shall be automatically removed. Seller shall cooperate in providing access to the premises to purchase, any delay or interference in such access will serve to extend the contingency period herein in like amount.

4. *Closing Adjustments.* The following items of expense are to be adjusted and prorated between Seller and Buyer as of 11:59 P.M. on the day preceding the Closing Date, based upon a 365-day year, and the net amount thereof shall be added to (if such net amount is in Seller's favor) or deducted from (if such net amount is in Buyer's favor) the Cash Payment:

(a) *Taxes.* Real estate taxes, school taxes, special assessments, business improvement district charges, vault charges, and water and sewer taxes, ground rents and other charges for the Premises ("**Taxes and Assessments**") due and owing as of the Closing Date shall be paid by the Purchaser.

(b) *Miscellaneous*. Such other apportionments and adjustments shall be made as are customarily made in similar types of property in the county in which the Property is located.

5. *Title Insurance/Objection*. As evidence of title, Seller, at Seller's expense, agrees to furnish Purchaser within 10 days of the Effective Date a commitment for an owner's policy of title insurance issued by Old Woodward Title Company of 470 N Old Woodward Ave Suite 250A, Birmingham, MI 48009 (Title Company) in an amount not less than the Purchase Price and bearing a date later than the acceptance date of this Agreement, together with legible copies of all recorded documents with the owner's policy to be issued at closing pursuant to the commitment insuring marketable title to the Property in Purchaser's name.

On receipt of the commitment for title insurance and recorded documents, Purchaser will have five (5) days to provide Seller with written notice of any objections to title. All matters of title must be satisfactory to Purchaser in Purchaser's sole discretion. At Purchaser's request, Seller will then have 30 days after receiving the written notice to remedy the objection to Purchaser's satisfaction. If Seller is unable to remedy the objection within those 30 days, Purchaser will have the option of proceeding and closing the transaction or declaring this Agreement null and void and having the closing deposit immediately refunded in its entirety to Purchaser.

For purposes of this Agreement, *marketable title* means fee simple title free and clear of any and all liens and encumbrances whatsoever, except standard exceptions: recorded and enforceable building and use restrictions, public utility easements of record, and zoning ordinances, which appear in the title commitment and will not constitute title defects or render the title to the Property unmarketable. However, Purchaser, at Purchaser's sole option, may elect to accept title in whatever condition it may be in, notwithstanding the condition would not meet the above definition of *marketable title* and, in such event, *marketable title* will mean the condition of title that Purchaser has elected to accept

6. *Closing*. The transactions contemplated under this Agreement shall be consummated at a closing (Closing) to be held within five (5) days of Purchaser's acceptance of Title as set forth in section 5, or the expiration of Purchaser's period of inspection, whichever is later. At Closing,

(a) Seller shall

(i) execute and deliver to Purchaser a Warranty Deed to the Real Property;

(ii) execute and/or deliver affidavits and other documents that may be reasonably required by the Title Insurance Company (Title Company) for the issuance of a title insurance policy pursuant to Title Insurance Commitment No. _____ issued by the Title Company (Title Policy), except that any UCC, bankruptcy, or judgment lien searches or the like shall be done at the sole effort, cost, and expense of Purchaser;

(iii) cause the Title Company to be paid the premium for the issuance of the Title Policy;

(iv) pay the real estate transfer taxes imposed under Michigan law in connection with the recordation of the Deed;

(v) execute, at Purchaser's option, a Michigan Real Estate Transfer Tax Valuation Affidavit;

(vi) execute and deliver to Purchaser an Affidavit of nonforeign status;

(viii) deliver to Purchaser, to the extent within Seller's or its agent's possession or control, originals of all Plans and Warranties; and

(ix) deliver all keys to and exclusive possession of the Property to Purchaser, free and clear of the possessory rights of any person or entity and in the same condition as exists on the date of Purchaser's execution of this Agreement.

(b) Purchaser shall pay to Seller the Purchase Price, as adjusted pursuant to Paragraph 5, by wire transfer of immediately available funds.

(c) Seller and Purchaser shall execute a mutually acceptable Closing Statement.

7. Default and Remedies.

(a) If Seller fails to perform in accordance with this Agreement or if any representation or warranty of Seller in this Agreement is untrue when made or at Closing, Seller shall be in default. In the event of a default by Seller, Purchaser may, as its sole and exclusive remedies, elect to either enforce the terms of or terminate this Agreement. If Purchaser elects to terminate the earnest money shall be refunded forthwith.

(b) In the event of a default under this Agreement by Purchaser, Seller may, as its sole and exclusive remedy, elect to terminate this Agreement. If Seller elects to terminate the earnest money shall be refunded forthwith.

8. Representations and Warranties.

(a) Seller warrants and represents to Purchaser that as of the date of this Agreement and at Closing

(i) Seller owns good and marketable fee simple title to the Real Property;

(ii) this Agreement constitutes a legal, valid, and binding agreement of Seller;

(iii) to Seller's actual knowledge, (A) the Property has not been used for the generation, storage, treatment, or disposal of Hazardous Materials, (B) no Hazardous Material is located in, on, or beneath the Property, including but not limited to any underground storage tanks, and (C) no underground storage tank was previously removed from the Property;

(iv) to Seller's actual knowledge, (A) there is no pending or threatened litigation or proceeding relating to the Property or the operation or use of it, and (B) there is no pending or threatened bankruptcy proceeding involving Seller;

(v) to Seller's actual knowledge, the Property is not, and Seller has not received any notice that the Property is, in violation of any federal, state, local, or other governmental zoning, health, environmental, safety, platting, subdivision, or other law, ordinance, or regulation, or any applicable private restriction relating to the Property or the operation or use of it;

(vi) Seller has not received any notice from any insurance carrier of any defects or inadequacies in the Property, which, if not corrected, could result in a cancellation of insurance coverage or a material increase in the cost of it;

(vii) there are no leases or contracts relating to the Property or the operation or use of it that will be binding on Purchaser or the Property subsequent to Closing;

(viii) Seller is authorized and existing under the laws of the State of Michigan; neither the execution of this Agreement nor the performance of Seller's obligations under this Agreement will constitute a default under its organizational documents or any contract or agreement by which Seller is bound; and, the execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement by Seller will not violate any order, writ, injunction, or decree of any court in any litigation to which Seller has knowledge of and is a party or bound or violate any law.

(b) Purchaser represents and warrants to Seller as of the date of this Agreement and at Closing that

(i) Purchaser is authorized to complete the transaction;

(ii) neither the execution of this Agreement by Purchaser nor the performance of Purchaser's obligations under this Agreement will constitute a default under its organizational documents or any contract or agreement by which Purchaser is bound; and

(iii) the execution and delivery of this Agreement by Purchaser and the consummation of the transactions contemplated by this Agreement by Purchaser will not violate any order, writ, injunction, or decree of any court and any litigation to which Purchaser is a party or bound or violate any law.

9. *Broker.* Seller and Buyer expressly acknowledge that if either Party has contracted a broker with respect to the Transaction, and with respect to this Agreement, such obligated Party shall pay any brokerage commission due to their respective Broker in accordance with the separate agreement between the Party and Broker. Each Party agrees to hold the other harmless and indemnify the other from and against any and all Liabilities (including reasonable attorneys' fees, expenses and disbursements) suffered or incurred by the Party as a result of any claims by the represented Party's Broker or any other party claiming to have represented that Party in connection with the Transaction. The provisions of this section shall survive the Closing (and not be merged therein) or the earlier termination of this Agreement

10. *Notice.* Any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and the same shall be given and deemed to have been served and given when (a) delivered in person to the party to whom the notice is given, (b) placed in the U.S. mail, postage prepaid, by registered or certified mail, return receipt requested, or (c) deposited with a nationally recognized overnight courier service. The address of the parties for the purposes of this Agreement and for all notices under this Agreement shall be the address indicated in the introductory paragraph of this Agreement.

11. *Entire Agreement.* This Agreement embodies the entire agreement of the parties and supersedes any prior or contemporaneous understandings or written or oral agreements between them concerning the Property. No variation, modification, or alteration of these terms shall be binding on either party unless set forth in an express and formal written amendment executed by all parties to this Agreement.

13. *Governing Law.* This Agreement shall be governed by and construed under and in accordance with the laws of the State of Michigan.

14. *Binding Effect.* All of the terms and provisions in this Agreement shall bind and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.

16. *Counterparts; Facsimile.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile transmission, and a facsimile of this Agreement or of a signature of a party will be effective as an original.

The parties have executed this Agreement on the date listed on the first page.

SELLER:

**CARL L. WALTMAN
PEGGY WALTMAN
4393 BEECHWOOD LAKE DR
NAPLES, FL 34112-6157**

Carl L Waltman

Peggy Waltman

PURCHASER:

**LAKE ORION DOWNTOWN
DEVELOPMENT AUTHORITY**

**Matthew Gibb
Executive Director**

**Debbie Burgess
Board Chair**

EXHIBIT A Legal Description

To be provided by the Title Company

EXHIBIT B Form of Deed

To be provided by the Title Company

WALTMAN PARCEL – REAR OF 215 S BROADWAY (LUMBER YARD)

