

CAUSE NO. 2022-68763

DMI SECURITIES LLC § **IN THE DISTRICT COURT**
§
VS. § **151st JUDICIAL DISTRICT**
§
JOSEPH JACKSON § **OF HARRIS COUNTY, TEXAS**

MOTION TO DISMISS FOR LACK OF JURISDICTION BY SUBMISSION

Defendant, Joseph Jackson, Movant herein, files this Motion to Dismiss for Lack of Jurisdiction and respectfully shows the Court as follows:

1. This Motion is filed as provided in Rule 85, Texas Rules of Civil Procedure.
2. This Court lacks jurisdiction in this cause because the Company Agreement to which all parties to this litigation are bound prescribes Arbitration under the American Arbitration Act as the exclusive venue for resolution of disputes and has exclusive jurisdiction in this matter.
3. The company Agreement which was admitted into evidence at the Temporary Injunction hearing held by this Court on November 28, 2022, provides clear guidelines for the resolution of any disputes between the members. Section 10 of the Company spells out with distinct clarity the procedures to be followed to resolve disputes. Section 10 is quoted verbatim herein”

Article 10. Internal Dispute Resolution Procedure

EACH PROSPECTIVE MEMBER SHOULD CAREFULLY READ THIS ENTIRE ARTICLE 10 TO ENSURE THAT THEY UNDERSTAND THAT BY SIGNING THIS AGREEMENT, THEY ARE GIVING UP THEIR RIGHT TO TRIAL AND REIMBURSEMENT OF EXPENSES RELATED TO ANY DISPUTE. THE PRIMARY PURPOSE OF THIS ARTICLE IS TO PROTECT THE MEMBERS AND THEIR RESPECTIVE INVESTMENTS IN THE COMPANY.

Section 10.1 Introduction

Because the nature of the Company is to generate profits from the Company's operations, it is imperative that one Member's dispute with the Manager and/or the other Members is not allowed

to diminish the profits available to other Members. Litigation could require diversion of the Company's profits to pay attorneys' fees or could tie up Company funds necessary for the operation of the Company, impacting the profitability of the investment for all of the Members. The only way to prevent such needless expense is to have a comprehensive dispute resolution procedure in place, to which each of the Members have specifically agreed in advance of membership in the Company. The procedure described below requires an aggrieved party to take a series of steps designed to amicably resolve a Dispute on terms that will preserve the interests of the Company and other non-disputing Members, before invoking a costly remedy, such as arbitration.

In the event of a dispute, claim, question, or disagreement between the Members or between the Manager and one or more Members arising from or relating to this Agreement, the breach thereof, or any associated transaction (hereinafter "Dispute"), the Manager and Members hereby agree to resolve such Dispute by strictly adhering to the dispute resolution procedure provided in this Article.

Section 10.2 Notice of Disputes

The aggrieved party must send written Notice of a Dispute to the Manager.

Section 10.3 Negotiation of Disputes

The parties hereto shall use their best efforts to settle any Dispute. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all the parties. **If, within a period of ninety (90) days after written Notice of such Dispute has been served by either party on the other, the parties have not reached a negotiated solution, then upon further Notice by either party, the Dispute shall be submitted to mediation administered by the American Arbitration Association ("AAA") in accordance with the provisions of its commercial mediation rules. The onus is on the aggrieved party to initiate each next step in this dispute resolution procedure as provided below.**

Tiebreaker Provision. If the disputing parties are unable or unwilling to attempt a negotiated agreement on their own within thirty (30) days of Notice of the Dispute, they shall appoint a mutually acceptable neutral party who shall be either an attorney or CPA licensed in

any state, familiar with the Securities Act, TBOC and Regulation D offerings, to review the facts surrounding the Dispute and offer a nonbinding tiebreaking vote and/or proposed resolution. All costs and fees for such informal resolution shall be split equally between the parties to the dispute.

Section 10.4 Alternative Dispute Resolution

On failure of negotiation, mediation, and as a last resort binding arbitration, shall be used to ultimately settle the Dispute. The following provisions shall apply to any subsequent mediation or arbitration.

Preliminary Relief. Any party to the Dispute may seek preliminary relief at any time after negotiation described above has failed, but prior to arbitration, under the "Optional Rules for Emergency Measures of Protection of the AAA Commercial Arbitration Rules and Mediation Procedures." The AAA case manager may appoint an arbitrator who will hear only the preliminary relief issues without going through the arbitrator selection process described in this Article.

Consolidation. Identical or sufficiently similar Disputes presented by more than one Member may, at the option of the Manager, be consolidated into a single negotiation, mediation, and/or arbitration.

Location of Mediation or Arbitration. Any mediation or arbitration shall be conducted in the venue set forth in Section 1.9, and each party to such mediation or arbitration must attend in person.

Attorney Fees and Costs. Each party shall bear its own costs and expenses (including its own attorneys' fees) and an equal share of the mediator or arbitrators' fees and any administrative fees, regardless of the outcome.

Maximum Award. The maximum amount a party may seek during mediation or be awarded by an arbitrator is the amount equal to the party's Capital Contributions and any Distributable Cash or interest to which the party may be entitled. An arbitrator will have no authority to award punitive or other damages.

AAA Commercial Mediation or Arbitration Rules. Any Dispute submitted for mediation or arbitration shall be subject to the AAA's commercial mediation or arbitration rules. If there is a conflict between these rules and this Article, the Article shall be controlling.

Section 10.5 Mediation

Any Dispute that cannot be settled through negotiation as described in this Article may proceed to mediation. The parties shall try in good faith to settle the Dispute by mediation, which each of the parties to the Dispute must attend in person, before resorting to arbitration. **If, after no less than three (3) face-to-face mediation sessions, mediation proves unsuccessful at resolving the Dispute, the parties may then, and only then, resort to binding arbitration as described in Section 10.6.**

If the initial mediation(s) does not completely resolve the Dispute, any party may request, for good cause (which shall be specified in writing) a different mediator for subsequent mediation(s) by serving Notice of the request on the other party(ies) for approval. If good cause exists, such request shall not be unreasonably denied.

Selection of Mediator. The complaining party shall submit a request for mediation to the AAA. The AAA will appoint a qualified mediator to serve on the case. The parties will be provided with a biographical sketch of the mediator. The parties are instructed to review the sketch closely and advise the AAA of any objections they may have to the appointment in writing within five (5) days of receipt. If no objections are received within this timeframe, the mediator shall be deemed acceptable, and mediation scheduled as soon as possible thereafter.

The preferred mediator shall have specialized knowledge of securities law, unless the dispute pertains to financial accounting issues, in which case the arbitrator shall be a certified public accountant, or if no such Person is available, shall be generally familiar with the subject matter involved in the Dispute. If the parties are unable to agree on the mediator within thirty (30) days of the request for mediation, the AAA case manager will make an appointment.

Section 10.6 Arbitration

Any Dispute that remains unresolved after good faith negotiation and three (3) failed mediation sessions shall be settled by binding arbitration. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Selection of Arbitrator. Prior to arbitration, the complaining party shall cause the appointment of an AAA case manager by filing of a claim with the AAA along with the appropriate filing fee and serving it on the defending party. The AAA case manager shall provide each party with a list of proposed arbitrators who meet the qualifications described below, or if no such Person is available, are generally familiar with the subject matter involved in the Dispute. Each side will be given a number of days to strike any unacceptable names, number the remaining names in order of preference, and return the list to the AAA. The AAA case manager shall then invite Persons to serve from the names remaining on the list, in the designated order of mutual preference. Should this selection procedure fail for any reason, the AAA case manager shall appoint an arbitrator as provided in the applicable AAA Commercial Arbitration Rules.

Qualifications of Arbitrator. The selected arbitrator shall have specialized knowledge of securities law, unless the dispute pertains to financial accounting issues, in which case the arbitrator shall be a certified public accountant. Further, the selected arbitrator must agree to sign a certification stating that they have read this Agreement and all of the documents relevant to this Agreement in their entirety.

Limited Discovery. Discovery shall be limited to only this Agreement and those documents pertaining to this Agreement, any written correspondence between the parties, and any other documents specifically requested by the arbitrator as necessary to facilitate his or her understanding of the Dispute. The parties may produce witnesses for live testimony at the arbitration hearing at their own expense. A list of all such witnesses and complete copies of any documents to be submitted to the arbitrator shall be served on the arbitrator and all other parties within forty-five (45) days of the arbitration hearing, at the submitting party's expense.

Section 10.7 Maintenance of the Status Quo While a Dispute is Pending

Unless preliminary relief has been sought and granted pursuant to Section 10.4(a) above, while a Dispute is pending, the Manager shall continue all operations and

distributions of Distributable Cash in accordance with the provisions set forth in this Agreement as if the Dispute had not arisen, except that, a complaining Member's distributions shall be suspended, and held in trust by the Manager, pending the outcome of the Dispute

This Court is without jurisdiction to hear the matters at hand as the Company Agreement has designated binding arbitration as the last and sole process for resolution of disputes. Plaintiffs have wholly failed to abide by and follow the contractually agreed procedures of the Company Agreement by which all parties to the HSDP LLC are bound. Even with regard to preliminary relief, they have failed to abide by and are in contravention of The Company Agreement. The only role for the court is spelled out in Section 10.6 - Any Dispute that remains unresolved after good faith negotiation and three (3) failed mediation sessions shall be settled by binding arbitration. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

PRAYER: Movant prays that the Court set this matter for hearing and, at the conclusion thereof, the Court dismiss this suit for lack of jurisdiction. Movant further requests such other and further relief as may be determined by the Court to be appropriate.

Respectfully submitted,

LAW OFFICE OF WARREN FITZGERALD
MUHAMMAD

By: /s/Warren Fitzgerald Muhammad

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Certificate of Service

I certify that a true copy of this document was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on November 29, 2022.

Mary Alice Parson by electronic filing manager at mary@parsonslawtexas.com.

/s/Warren Fitzgerald Muhammad

Warren Fitzgerald Muhammad

Texas State Bar NO. 07089500

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NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that Joseph Jackson's Motion to Dismiss will be considered on the Court's submission docket on December 19, 2022, at 8:00 a.m. in the 151st District Court of Harris County, Texas.

Respectfully submitted,

LAW OFFICE OF WARREN FITZGERALD
MUHAMMAD

By: /s/Warren Fitzgerald Muhammad

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