Case No. 073979

## IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION ONE

#### DARRYL COTTON Defendant and Petitioner,

v.

The Superior Court, County of San Diego, Respondent. LARRY GERACI, an individual, REBECCA BERRY, an individual, CITY OF SAN DIEGO, a public entity, Real Parties in Interest.

#### EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF AND REQUEST FOR IMMEDIATE STAY

## **VOLUME IV – EXHIBITS 16-18**

Darryl Cotton 6176 Federal Blvd. San Diego, CA 92114 Telephone: (619) 954-4447 Petitioner, Self-Represented

## INDEX OF EXHIBITS TO PETITION FOR WRIT OF MANDATE VOLUME IV – EXHIBITS 16-18 [PAGES 627 – 1203]

| EXH. | DATE     | DESCRIPTION                            | PAGE<br>RANGE |
|------|----------|--|---------------|
| 16   | 04/04/18 | Notice of Motion and Motion to         | 629 - 1126    |
|      |          | Expunge Notice of Pendency of Action   |               |
|      |          | (Lis Pendens)                          |               |
|      |          | [SDSC ROA 161, 189]                    |               |
| 17   | 04/05/18 | Minute Order on Ex Parte Application   | 1127          |
|      |          | by Defendant Darryl Cotton to Shorten  |               |
|      |          | Time for Hearing on Motion to          |               |
|      |          | Expunge Lis Pendens and Oral Request   |               |
|      |          | to Stay Case Due to Appeal             |               |
|      |          | [SDSC ROA 12]                          |               |
| 18   | 04/10/18 | Plaintiff Larry Geraci's Opposition to | 1128 - 1203   |
|      |          | Defendant Darryl Cotton's Motion to    |               |
|      |          | Expunge Lis Pendens                    |               |
|      |          | [SDSC ROA179-186]                      |               |

|    |   | 1   |
|----|---|---|
| ĩ  |   |   |
| 1  | Jacob P. Austin, SBN 290303<br>The Law Office of Jacob Austin | F <sup>1</sup> <sub>Clerk of the Superior Court</sub> <b>D</b><br>APR 04 2018 |
| 1  | 1455 Frazee Road, #500<br>San Diego, CA 92108                 |   |
| 3  | Telephone: 619.357.6850                                       | By: A. SEAMONS, Deputy  |
| 4  | Facsimile: 888.357.8501<br>JPA@JacobAustinEsq.com             |   |
| 5  | Attorney for Defendant and Cross-Complainant D                | arryl Cotton  |
| 6  |   |   |
| 7  |   |   |
| 8  | 1   | RT OF CALIFORNIA  |
| 9  | COUNTY OF SAN DIEC  | GO – CENTRAL DIVISION   |
| 10 |   |   |
| 11 | LARRY GERACI, an individual,                                  | ) CASE NO.: 37-2017-00010073-CU-BC-CTL  |
| 12 | Plaintiff,  | NOTICE OF MOTION AND MOTION TO  |
| 13 | VS.   | <ul> <li>ACTION (<i>LIS PENDENS</i>)</li> </ul>                               |
| 14 | DARRYL COTTON, an individual; REBECCA                         |   |
| 15 | BERRY, an individual; and DOES 1-10,<br>INCLUDE, inclusive,   | DATE: April 13, 2018  |
| 16 | iivele bl, metusive,  | { TIME: 9:00 a.m.<br>} DEPT: C-73   |
| 17 | Defendants.   | JUDGE: The Honorable Joel R. Wohlfeil   |
| 18 |   |   |
| 19 | DARRYL COTTON, an individual,                                 |   |
| 20 | Cross-Complainant,  | }   |
| 21 | VS.   |   |
| 22 | LARRY GERACI, and individual, REBECCA                         | }   |
| 23 | BERRY, an individual; and DOES 1 THROUGH 10, INCLUSIVE,       | }   |
| 24 | Defendants.   |   |
| 25 |   |   |
| 26 | TO EACH PARTY AND THEIR RE                                    | ESPECTIVE COUNSEL OF RECORD:  |
| 27 | PLEASE TAKE NOTICE that on April 1                            | 3, 2018 at 9:00 a.m. or as soon thereafter as the matter                      |
| 28 |   | ntitled Court located at 110 Union Street, San Diego,                         |
|    |   |   |
|    | NOTICE OF MOTION AND MOTION TO EXPUNGE                        | 1 $629$ Notice of Pendency of Action ( <i>Lis Pendens</i> ),                  |
|    |   |   |

₹.

California, Defendant/Cross-Complainant Darryl Cotton, by and through his counsel Jacob P. Austin,
 will move for an order expunging the *lis pendens* recorded in the office of the Recorder of San Diego
 County as Instrument Number 2017-0129756 and filed in the above-referenced action on March 22,
 2017, and an order awarding Defendant/Cross-Complainant reasonable attorneys' fees and costs.

5 The motion is made upon the grounds that the Complaint lacks "probable validity" which can be 6 established by a preponderance of the evidence in light of the evidence presented by Plaintiff.

The motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, Declaration of Darryl Cotton and Request for Judicial Notice, the pleadings and records on file in this action, and upon such other and further oral and documentary evidence which may be presented at the hearing on this Motion.

12 || [

DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

By

Attorney for Defendant and Cross-Complainant DARRYL COTTON

NOTICE OF MOTION AND MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (LIS PENDENS),

| -   |     |   |            |                |                               |
|-----|-----|---|------------|----------------|-------------------------------|
| 9   | e.  | • •   |            |                |                               |
| • • |     |   | •          |                |                               |
|     |     |   | :          |                |                               |
|     |     | Jacob P. Austin, SBN 290303                   |            |                |                               |
|     | 1   | The Law Office of Jacob Austin                |            |                | F clerk of the Superior Court |
|     | 2   | 1455 Frazee Road, #500                        |            |                |                               |
|     |     | San Diego, CA 92108                           |            |                | APR 0 4 2018                  |
|     | 3   | Telephone: 619.357.6850                       | !          |                | Bur A SEAMONG Deputy          |
|     | 4   | Facsimile: 888.357.8501                       |            |                | By: A. SEAMONS, Deputy        |
|     |     | JPA@JacobAustinEsq.com                        | :          |                |                               |
|     | 5   | Attorney for Defendant and Cross-Complain     | i<br>nant' | Darry Cotton   |                               |
|     | 6   | (Representation limited to Motion to Expunge. |            |                |                               |
|     |     |   | 1          | ,              |                               |
|     | 7   | SUBEDIOD CO                                   |            |                |                               |
|     | 8   | SUPERIOR CO                                   | UKI        | I OF CALIFOI   | KNIA                          |
|     |     | COUNTY OF SAN D                               | IEGO       | ) – CENTRAL    | DIVISION                      |
|     | 9   |   | :          |                |                               |
|     | 10  | LARRY GERACI, an individual,                  |            | CASENO 2       | 7-2017-00010073-CU-BC-CTL     |
|     | 11  |   |            | ) CASE NO. $3$ | /-2017-00010073-CO-BC-CIL     |
|     |     | Plaintiff,                                    |            | )              |                               |
|     | 12  |   | ÷          | DARRYL CO      | OTTON'S MEMORANDUM OF         |
|     | 13  | VS.   | 5          | /              | D AUTHORITIES IN SUPPORT      |
|     |     | DARRYL COTTON, an individual; REBECC          | A          |                | TO EXPUNGE NOTICE OF          |
|     | 14  | BERRY, an individual; and DOES 1-10,          | -          | ) PENDENCY     | OF ACTION (LIS PENDENS)       |
|     | 15  | INCLUSIVE,                                    |            |                |                               |
|     |     |   |            | )<br>DATE:     | April 13, 2018                |
|     | 16  | Defendants.                                   | 5          | ) TIME:        | 9:00 a.m.                     |
|     | 17  |   |            | DEPT:          | C-73                          |
|     | 1.0 | DARRYL COTTON, an individual,                 | 4          | JUDGE:         | Honorable Joel R. Wohfeil     |
|     | 18  |   |            | Ó              |                               |
|     | 19  | Cross-Complainant,                            |            | )              |                               |
|     | 20  | vs.   | 5          | Ś              |                               |
|     | 20  |   |            | )              |                               |
|     | 21  | LARRY GERACI, and individual, REBECCA         |            | )              |                               |
|     | 22  | BERRY, an individual; and DOES 1 THROUC       | H (        | )              |                               |
|     |     | 10, INCLUSIVE,                                |            | )              |                               |
|     | 23  | Cross-Defendants.                             | 5          | Ś              |                               |
|     | 24  | Closs-Derendants.                             |            | )              |                               |
|     | 25  |   | ,          | )              |                               |
|     |     |   | 1          |                |                               |
|     | 26  |   | . !        |                |                               |
|     | 27  |   |            |                |                               |
|     | 28  | :   |            |                |                               |
|     |     |   |            |                |                               |
|     |     |   | `<br>!     |                | 63                            |
|     |     |   |            |                |                               |
|     |     |   | ;          |                |                               |
|     | 1   | 1   |            |                |                               |

| 1        | TABLE OF CONTENTS   |
|----------|---|
| 2 I.     | FACTUAL BACKGROUND  |
| 3        |   |
| 4    II. | DISCUSSION.   |
| 5        | A. GERACI HAS THE BURDEN OF PROOF IN OPPOSING   |
| 6        | COTTON'S MOTION TO EXPUNGE A <i>LIS PENDENS</i><br>PURSUANT TO CCP §405.32                                |
| 7        | B. GERACI CANNOT ESTABLISH PROBABLE VALIDITY  |
| 8        | THAT THE RECEIPT IS THE FINAL AGREEMENT FOR   |
| 9        | COTTON'S PROPERTY.  |
| 10       | C. ALL OF GERACI'S ARGUMENTS ARE MEANT TO DISTRACT<br>THIS COURT FROM THE UNDISPUTED AND CASE DISPOSITIVE |
| 11       | NATURE OF THE CONFIRMATION MAIL AND OTHER EVIDENCE  |
| 12       | PROVING THE RECEIPT IS JUST A RECEIPT.  |
| 13 III.  |   |
| 14       |   |
| 15       | ·   |
| 16       |   |
| 17       |   |
| 18       |   |
| 19       |   |
|          |   |
| 20       |   |
| 21       |   |
| 22       |   |
| 23       |   |
| 24       |   |
| 25       |   |
| 26       |   |
| 27       |   |
| 28       |   |
|          |   |

#### 1 **TABLE OF AUTHORITIES**

1

| 2        | CASE LAW   |       |
|----------|--|-------|
| 3        | Amalgamated Bank v. Superior Court (2007) 149 Cal.App.4th 1003   | 1     |
| 4        | BGJ Associates, LLC v. Superior Court (1999) 75 Cal.App.4th 952  | 1     |
| 5        | Bily v. Arthur Young & Co. (1992) 3 Cal.4th 370  | 11    |
| 7        | Castro v. Superior Court (2004) 116 Cal.App.4th 1010   | 15    |
| 8        | Ferguson v. Koch (1928) 204 Cal. 342   | 14    |
| 9        | Hilberg v. Superior Court (1989) 215 Cal.App.3d 539  | 1, 15 |
| 10       | J-Marion Company, Inc. v. County of Sacramento (1977) 76 Cal.App.3d 517                                |       |
| 11       | Lazar v. Superior Court (1996) 12 Cal.4th 631  |       |
| 12       | Malcolm v. Superior Court (1981) 29 Cal.3d 518.  |       |
| 13       |  |       |
| 14       | Pacesetter Homes, Inc. v. Brodkin (1970) 5 Cal.App.3d 206  | 11    |
| 15       | People v. Sarpas (2014) 225 Cal.App.4th 1539   | 10    |
| 16<br>17 | Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n         (2013) 55 Cal.4th 1169 | 4-15  |
| 18       | Robinson Helicopter Co., Inc. v. Dana Corp. (2004) 34 Cal.4th 979                                      | 12    |
| 19       | Romano v. Rockwell Internat., Inc. (1996) 14 Cal.4th 479   | 13    |
| 20       | <i>Shah v. McMahon</i> (2007) 148 Cal.App.4th 526  |       |
| 21       | Small v. Fritz Companies, Inc. (2003) 30 Cal.4th 167   |       |
| 22       |  |       |
| 23       | <i>Tenzer v. Superscope, Inc.</i> (1985) 39 Cal.3d 18  |       |
| 24       | Wells v. Zenz (1927) 83 Cal.App. 137   | 11    |
| 25       | Whiteley v. Philip Morris Inc. (2004) 117 Cal.App.4th 635  | 12    |
| 26       |  |       |
| 27       |  |       |
| 28       | . i  |       |
|          | 63   | 33    |

.

ł

#### 

# 2 California Civil Code

| 3  | Section 1440   |
|----|--|
| 4  | Section 1572   |
| 5  | 1572(1)  |
|    | 1572(3)  |
| 6  | 1572(5)  |
| 7  | Section 1573   |
| 8  | Section 1709   |
| 9  | Section 1710   |
| 10 | Section 3300   |
|    | Section 5501   |
| 11 | California Code of Civil Procedure   |
| 12 | Section 405.30 et seq  |
| 13 | Section 405.31   |
| 14 | Section 405.32   |
|    | Section 405.38   |
| 15 | Section 2019.030   |
| 16 | 2019.030(a)(2)   |
| 17 |  |
| 18 | BOOKS AND TREATISES  |
| 19 | Cal. Zoning Practice, Types of Zoning Relief §7.64, p.299 (Cont. Ed. Bar 1996)               |
|    |  |
| 20 | Miller & Starr, California Real Estate, Chapter 10, Section D.8 (December 2017 Update)       |
| 21 | Weil & Brown, Cal. Practice Guide, Civil Procedure Before Trial (The Rutter Group 2017)      |
| 22 | ¶9:422   |
| 23 | ¶9:436.2   |
| 24 | Weil & Brown, California Practice Guide, Civil Procedure Before Trial, Claims & Defenses     |
|    | (The Rutter Group 2017)<br>¶5:3  |
| 25 |  |
| 26 | 1 Witkin, Summary of California Law, Contracts (11 <sup>th</sup> ed. 2017)                   |
| 27 | §§861-868  |
| 28 |  |
|    |  |
|    | 634  |
|    | iii<br>DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION ( <i>LIS PENDENS</i> ) |
|    | DAIGHTE COTTON S MOTION TO EATONGE NOTICE OF FEMDENCT OF ACTION (LIS FENDENS)                |

| Witkin, Summary of California Lav<br>§767 | · · · · · · · · · · · · · · · |                               | • • • • • • • • • • • • • • • • • • • |   |
|---|-------------------------------|-------------------------------|---------------------------------------|---|
| §808                                      | • • • • • • • • •<br>!        | • • • • • • • • • • • • • • • | • • • • • • • • • • • • • • • •       |   |
|   |                               |                               |                                       |   |
|   | ı                             | •<br>•                        |                                       |   |
|   |                               |                               |                                       |   |
|   |                               |                               |                                       |   |
|   |                               |                               |                                       |   |
|   |                               | ,                             |                                       |   |
|   |                               |                               |                                       |   |
|   |                               |                               |                                       |   |
|   | 1                             |                               |                                       |   |
|   | :                             |                               |                                       |   |
|   |                               |                               |                                       |   |
|   | ı                             |                               |                                       |   |
|   | 1                             |                               |                                       |   |
|   |                               |                               |                                       |   |
|   | ,<br>,<br>,                   |                               |                                       |   |
|   | 1<br>1<br>1                   |                               |                                       |   |
|   | F .                           |                               |                                       |   |
|   |                               | i<br>1                        |                                       | • |
|   | :                             |                               |                                       |   |
|   | 1                             |                               |                                       |   |
|   | 1                             | !                             |                                       |   |
|   |                               | :                             |                                       |   |
|   |                               | -<br> -<br> -                 |                                       |   |
|   | ,                             | i                             |                                       |   |
|   |                               |                               |                                       |   |
|   |                               |                               |                                       |   |
|   | '                             | i                             | -                                     |   |

ļ

i

! : }

.

#### **MEMORANDUM OF POINTS AND AUTHORITES**

Defendant and Cross-Complainant Darryl Cotton ("<u>Cotton</u>") hereby moves this Court to expunge the *Lis Pendens* (the "*LP*") recorded by Plaintiff Larry Geraci ("<u>Geraci</u>") on his real property located at 6176 Federal Blvd., San Diego (the "<u>Property</u>") pursuant to CCP §405.32 for the following reasons.

As stated by the California Supreme Court, "[T]he lis pendens procedure [is] susceptible to serious abuse, providing unscrupulous plaintiffs with a powerful lever to force the settlement of groundless or malicious suits." *Malcolm v. Superior Court* (1981) 29 Cal.3d 518, 524. "Once a lis pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is resolved or the lis pendens is expunged." *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952, 967. "Because of the potential for abuse and injustice to the property owner, the Legislature has provided statutory procedures (CCP §405.30 *et seq.*) by which a lis pendens may be removed ('expunged')." Weil & Brown, Cal. Practice Guide, *Civ. Pro. Before Trial* (The Rutter Group 2017) ("Rutter Guide") ¶9:422 (*citing Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529). "[T]he lis pendens procedure provides a means by which a court may dispose of meritless real estate claims at the *preliminary stage of a case.*" *Shah, supra*, at 529 (emphasis added).

CCP §405.30 *et seq.* was enacted to <u>require</u> proactive action by the trial court in the form of a "minitrial" on the merits in the *preliminary stage of a case.* As explained by the Court in *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, in analyzing the Legislature's intent in revising the *LP* laws in 1992 and enacting CCP §405.32:

The financial pressure created by a recorded lis pendens provided the opportunity for abuse, permitting parties with meritless cases to use it as a bullying tactic to extract unfair settlements. [¶] The Code Comment thus states that section 405.32 "is intended to disapprove *Malcolm...* and other cases which have held that the court on a motion to expunge may not conduct a 'minitrial' on the merits of the case. *This section is intended to change California law and to require judicial evaluation of the merits.*" (Code Com., 14A West's Ann. Code Civ. Proc., foll. §405.32, par. 3, p. 346, italics added.)

Amalgamated, supra, at 1012 (emphasis in original).

In Hilberg v. Superior Court (1989) 215 Cal.App.3d 539, 542, the Court stated: "We cannot ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made not to prevent conveyance of property that is the subject of the lawsuit, but to coerce an opponent to settle regardless of the merits." (Citing Malcolm, supra, at 678.) Here, this action represents the very evil which CCP §405.30 et seq. was enacted to prevent. This action was filed with no probable cause to

maliciously (i) prevent Cotton's sale of the Property to a third-party *bona fide* purchaser and (ii) exert undue financial, emotional and psychological pressure on Cotton to coerce him into settling with Geraci.

#### I. FACTUAL BACKGROUND

Cotton is the sole owner of record of the Property.<sup>1</sup> In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it met certain requirements of the City of San Diego ("<u>City</u>") to apply for and obtain a conditional use permit ("<u>CUP</u>")<sup>2</sup> that would allow the operation of a Marijuana Outlet ("<u>MO</u>")<sup>3</sup> at the Property. Over the ensuing months, the parties extensively negotiated the terms of a potential sale of the Property. (DC Decl. ¶2; VP ¶13, ¶14.)

During these negotiations, Geraci made the following representations to Cotton: (i) he could be 10 trusted as reflected by the fact that he operated in a fiduciary capacity as an IRS Enrolled Agent for many 11 powerful and high-net-worth-individuals ("HNWI"); (ii) he is the owner and operator of Tax and 12 Financial Center, Inc., an accounting and financial advisory services company, servicing HNWI and large 13 businesses in a fiduciary capacity; (iii) he was a California Licensed Real Estate Broker, bound by 14 professional and ethical obligations, to be truthful in real-estate deals; (iv) through his experts, who had 15 conducted preliminary due diligence, he had uncovered a critical zoning issue that unless first resolved 16 would prevent the City from even accepting a CUP application on the Property (the "Critical Zoning 17 Issue"); (v) through his professional relationships, which included his HNWI clients that were politically 18 influential, and through powerful hired lobbyists (some of whom used to work for the City in senior 19 positions), he was in a unique position to have the Critical Zoning Issue resolved; (vi) he was highly 20 qualified to operate a MO because he owned and operated multiple cannabis dispensaries in San Diego; 21 and (vii) his employee, Rebecca Berry ("Berry"), was a trustworthy individual who could be trusted to 22 be the applicant on the CUP application because she (a) managed his marijuana dispensaries, (b) held a 23 senior position at a church and came across as a "nice old lady that had nothing to do with marijuana," 24

25

26

1

2

3

4

5

6

7

8

9

<sup>&</sup>lt;sup>3</sup> RJN 3 (City of San Diego, Development Services Department Information Bulletin 170 (October 2017) (City Information Bulletin describing "the application process for a Marijuana Outlet")).



DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*)

<sup>&</sup>lt;sup>1</sup> Declaration of Darryl Cotton ("<u>DC Decl.</u>") ¶1; Request for Judicial Notice ("<u>RJN</u>") Exhibit ("<u>Ex.</u>") 1; (Verified Petition for Alternative Writ of Mandate) ("<u>VP</u>") ¶1; RJN Ex. 2 (Complaint ("<u>Comp</u>.") ¶4.

 <sup>&</sup>lt;sup>2</sup> A conditional use permit is administrative permission for uses not allowed as a matter of right in a zone, but subject to approval. (Cal. Zoning Practice, *Types of Zoning Relief* §7.64, p.299 (Cont. Ed. Bar 1996.) The issuance of a conditional use permit may be subject to conditions. (*J-Marion Company, Inc. v. County of Sacramento* (1977) 76 Cal.App.3d 517, 522.)

and (c), consequently, would pass the stringent City and State of California background checks required to have the CUP approved (collectively, the "Qualification Representations"). (DC Decl. ¶3.)

On or around October 31, 2016, Geraci asked Cotton to execute Form DS-318 (Ownership Disclosure Statement) ("Ownership Statement") - a required component of all CUP applications. (RJN 4.) Geraci told Cotton that he needed the executed Ownership Statement to show that he had access to the Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue. (DC Decl. ¶4.)

8 On November 2, 2016, Geraci and Cotton met at Geraci's office to negotiate the final terms of the 9 sale of the Property. At the meeting, the parties reached an oral agreement on the material terms for the 10 sale of the Property (the "November Agreement"). The November Agreement consisted of the following: 11 If the CUP was approved, then Geraci would, inter alia, provide: (i) a total purchase price of \$800,000; 12 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the 13 CUP was denied, Cotton would keep an agreed upon \$50,000 non-refundable deposit ("NRD") and the 14 transaction would not close. In other words, the issuance of the CUP at the Property was a condition 15 precedent for closing on the sale of the Property and, if the CUP was denied, Cotton would keep his 16 Property and the \$50,000 NRD. (DC Decl. ¶5.)

17 At the November 2, 2016 meeting, after the parties reached the November Agreement, Geraci: (i) 18 provided Cotton with \$10,000 in cash towards the NRD of \$50,000, for which Cotton executed a 19 document to record his receipt thereof (the "Receipt"); (ii) promised to have his attorney, Gina Austin 20 ("Austin"), promptly reduce the oral November Agreement to written agreements for execution; and (iii) promised to not submit the CUP to the City until he paid the balance on the NRD. (DC Decl. ¶6.)

After Geraci and Cotton met on November 2, 2016, reached the November Agreement, executed the Receipt and separated – the following email communications took place that same day:

At <u>3:11 p.m.</u>, Geraci emailed Cotton a scanned copy of the Receipt which states:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd. CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary) [¶] Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property. [DC Decl. Ex. 1, pp. 4-8.]

At 6:55 p.m., Cotton replied:

1

2

3

4

5

6

7

21

22

23

24

25

26

27

28

DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXP NOTICE OF PENDENCY OF ACTION (LIS PENDENS)

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any *final agreement* as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply. [DC Decl. Ex. 1, p.9 (emphasis added).]

At 9:13 p.m., Geraci replied: "No no [sic] problem at all" [Id. (emphasis added).]

In other words, the very same day on which the Receipt was executed, Cotton received a copy of the Receipt from Geraci and realized it could be misconstrued as a final agreement for the Property. Because Cotton was concerned, and wanted there to be no uncertainty, he requested Geraci confirm in writing the Receipt was not a final agreement. Geraci replied to Cotton's request for written confirmation; thereby clearly, unambiguously and indisputably confirming the Receipt is not a final agreement for Cotton's Property. Thus, Cotton refers to this email from Geraci as the "Confirmation Email." (DC Decl. ¶8.)

Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of the final written agreements for the Property.<sup>4</sup> However, Geraci continuously failed to make actual, substantive progress. Most notably, he failed to provide the final written agreements, pay the balance of the NRD, and to provide facts regarding the progress being made on the Critical Zoning Issue. (DC Decl. [9.) Regarding the Critical Zoning Issue, and also reflecting Geraci's general non-substantive replies and avoidance, the following text exchanges took place between Geraci and Cotton from January 6, 2017 and

February 7, 2017:

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

Cotton: Can you call me. If for any reason you're not moving forward I need to know. Geraci: I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24<sup>th</sup> of this month I'll try to call you later today still very sick Cotton: Are you available for a call? Geraci: I'm in a meeting I'll call you when I'm done Cotton: Thx Geraci: The sign off date they said it's going to be the 30th Cotton: This resolves the zoning issue?

Geraci: Yes

Cotton: Excellent

- Geraci: On phone.. Call you back shortly ...
- Cotton: Ok
- 28

26

27

See DC Decl. Ex. 1. (Fifteen (15) emails with attachments sent between Cotton and Geraci prior to the commencement of the instant suit between 10/24/16-03/21/17 containing all email communications between them.)

DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (LIS PENDENS)

| . ' |   |
|-----|---|
|     |   |
| 1   | <u>Cotton</u> : How goes it?<br><u>Geraci</u> : We're waiting for confirmation today at about 4 o'clock   |
| 2   | Cotton: Whats [sic] new?  |
| 3   | <u>Cotton</u> : Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet.                               |
| 4   | <u>Geraci</u> : I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork [Cotton Decl. Ex. 2, pp.1-4.]   |
| 5   | i .   |
| 6   | These text communications were meant to and did induce Cotton into believing, relying and acting on   |
| 7   | Geraci's representations he was making progress on the Critical Zoning Issue (the "Text   |
| 8   | Communications"). (DC Decl. ¶¶9-11.)  |
| 9   | On February 27, 2017, Geraci emailed Cotton: "Attached is the draft purchase of the property  |
| 10  | for 400k. The additional contract for the 400k should be in today and I will forward it to you as well."  |
| 11  | (DC Decl. Ex. 1, p.13.) The cover email clearly states Geraci's intent of effectuating the oral November  |
| 12  | Agreement via two separate written documents (each for \$400,000). Notably, Section 18(i) states:   |
| 13  | The parties shall be legally bound with respect to the purchase and sale of the Property  |
| 14  | pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully<br>executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile |
| 15  | transmission). [DC Decl. Ex. 1, p.29.]  |
| 16  | Thus, the language clearly reflects the parties were yet to be "legally bound" to "the purchase and sale of   |
| 17  | the Property" in February of 2017 and had yet to execute a final, legally binding agreement. Id.  |
| 18  | On March 2, 2017, Geraci emailed Cotton a draft of the additional contract, the Side Agreement,   |
| 19  | that was supposed to provide for, inter alia, Cotton's 10% equity stake. (DC Decl. Ex. 1, pp.41-48.) The  |
| 20  | next day, Cotton replied:   |
| 21  | Larry, I read the Side Agreement in your attachment and I see that no reference is made to  |
| 22  | the 10% equity position as per my Inda-Gro GERL Services Agreement (see attached) in<br>the new store. In fact para 3.11 [stating we are not partners] looks to avoid our agreement       |
| 23  | completely. It looks like counsel did not get a copy of that document. Can you explain?[5]  |
| 24  | Geraci did not reply to Cotton's email. Geraci did not pick up when Cotton called later. Exasperated,   |
| 25  | Cotton followed up with Geraci via text wanting to confirm that Geraci had received the email and   |
| 26  | understood his concern - that the Side Agreement did not provide for his "10% equity position" in the   |
| 27  | MO. Cotton texted: "Did you get my email?" (DC Decl. Ex. 2, p.4.) Geraci replied one minute later: "Yes   |
| 28  | I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you[.]" (DC Decl. Ex. 2, p.4  |
|     | <sup>5</sup> DC Decl. Ex. 1, pp.49-50 (email) (emphasis added); pp.51-52 (Inda-Gro GERL Services Agreement (attachment)).   |
|     | DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE<br>NOTICE OF PENDENCY OF ACTION ( <i>LIS PENDENS</i> )   |

1

÷

(the "Confirmation Text").) The Confirmation Text proves that on March 3, 2017 Geraci (i) was going to have Austin revise the Side Agreement to contain Cotton's "10% equity position" in the MO and (ii) had previously received, acknowledged and consented to the terms contained in the "Inda-Gro GERL Services Agreement." Notably, Geraci does not refuse, refute, argue or so much as question Cotton's requests or statements as would be logical if the Receipt were the full agreement as now alleged.

On March 6, 2017, Geraci and Cotton spoke regarding revisions required to have the drafts accurately reflect the November Agreement. Cotton communicated his frustration with the delays and Geraci again promised to have Austin promptly correct the mistakes in the drafts. During that conversation, Cotton let Geraci know he would be attending a local cannabis event at which Austin was scheduled to be the headnote speaker. (DC Decl. ¶13.) Geraci later texted Cotton he could speak with Austin directly at the event: "Gina Austin is there she has a red jacket on if you want to have a conversation with her." (DC Decl. Ex. 2, p.4.)

The next day, March 7, 2017, Geraci sent the following email to Cotton:

Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month.... can we do 5k, and on the seventh month start 10k? [DC Decl. Ex. 1, pp.53-54 (email), pp.55-58 (draft Side Agreement).]

The facts that are demonstrated by the March Request Email are clear: Geraci had an established obligation to Cotton, requiring him to pay a minimum of \$10,000 a month, and is requesting of Cotton a concession from that obligation - specifically, that for the first six months of the operations of the MO, he be allowed to pay Cotton \$5,000 instead of the \$10,000 per month base as required per the November Agreement (the "March Request Email").

Attached to Geraci's email was a revised draft of the Side Agreement in Word format. This draft provides for, inter alia, Cotton receiving (i) 10% of the net profits of the MO and (ii) a minimum monthly payment of \$10,000. (DC Decl. at Ex. 1, p.55.) Furthermore, Attorney Gina Austin (who for several months represented Geraci – a Real Party in Interest to the related Writ Action against the City), was responsible for, and did draft versions of the contracts months after the November agreement indicating her awareness that no final agreement had been executed. The attachment of the last draft provided was dated "March 3, 2017" (the "Metadata Evidence"). (DC Decl. ¶15, Ex. 3 (screen-shot of the Metadata Evidence).)

NOTICE OF PENDENCY OF ACTION (LIS PENDENS)

11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNG

1

2

3

4

5

6

7

8

9

1 On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci on 2 March 7, 2017, and discovering that it again did not accurately reflect the November Agreement, Cotton 3 decided to follow up with the City regarding the Critical Zoning Issue personally. It was at this point that 4 Cotton discovered that Geraci had been lying from the very beginning - Geraci had submitted a CUP for 5 the Property on October 31 2016, before the parties even reached the November Agreement. (DC Decl. ¶16.) Geraci's submission was a direct contradiction of his (i) representation that a CUP could not be 6 7 submitted until the Critical Zoning Issue was resolved and (ii) promise to not submit the CUP until he 8 had paid Cotton the balance of the NRD. A Parcel Information Report provided by the City of San Diego, 9 Development Services Department ("City Parcel Report") states the zoning of the Property was changed 10 to "CO-2-1" (MO qualifying zone) on January 14, 2016. (RJN 5, p.2.) In other words, the City Parcel Report makes clear the entire Critical Zoning Issue was a fraudulent scheme to (i) induce Cotton into 12 executing the Ownership Statement - no zoning change was required to submit the CUP for an MO to 13 the City on the Property – and (ii) to deceive Cotton into thinking that he required Geraci's unique and 14 powerful political influence to resolve the alleged Critical Zoning Issue.

11

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Later that same day, March 16, 2017, Cotton emailed Geraci, in relevant part, the following: [W]e started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed. [¶] I really want to finalize this as soon as possible - Ifound out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case. [1] Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. [DC Decl. Ex. 1, pp.59-60]

The next day, Geraci texted Cotton: "Can we meet tomorrow [?]" (DC Decl. Ex. 2, p.4.) Of note, Geraci, did not refute or dispute Cotton's factual assertions that Geraci had lied and submitted the CUP without, inter alia, paying Cotton the balance of the NRD and reducing the November Agreement to writing. Cotton replied via email:

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we

have final agreements, that we converse exclusively via email.... To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. <u>You lied to me</u>, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. <u>We need a final written, legal, binding agreement</u>.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

27

28

Please <u>confirm</u>, <u>as requested</u>, by 12:00 PM Monday <u>that you are honoring our agreement</u> <u>and will have final drafts</u> (reflecting completely the below) by Wednesday at 12:00 PM. [DC Decl. Ex. 1, p.61 (emphasis added).]

On March 18, 2017, Geraci replied to Cotton as follows: "Darryl, I have an attorney working on

the situation now. I will follow up by Wednesday with the response as their timing will play a factor."

(DC Decl. Ex. 1, pp.62-63.) Cotton, now understanding Geraci's deceitful nature, replied:

Larry, I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement. *I need written confirmation that you will honor our agreement* so that I know that you are not just playing for time – hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to. [DC Decl. Ex. 1, p.64.) (emphasis added).]

Geraci's response to Cotton's <u>three (3) written requests for assurance of performance</u> was nebulous, and there was no finalization of the written agreements or confirmation of his intent to do so by Cotton's deadline.

18 Thus, Cotton, having been true to his word and waiting until March 20 had passed (without receipt 19 of adequate assurance nor performance by Geraci, *i.e.*, Geraci's breach of the November agreement) 20 terminated the deal with Geraci on March 21, 2017 for breach: "To be clear, as of now, you have no 21 interest in my property, contingent or otherwise." (DC Decl. Ex. 1, p.67.) Having anticipated Geraci's 22 breach, Cotton had already lined up another buyer and then executed a written purchase agreement for 23 the sale of the Property to Mr. Martin (the "Martin Sale Agreement"). (RJN 6, pp.182-196.) The next 24 day. Geraci's counsel, Michael Weinstein ("Weinstein"), emailed Cotton the Complaint and the LP filed 25 on the Property. (DC Decl. ¶ 18,19.) The Complaint is premised solely on the allegation the Receipt is 26 the final written agreement for the Property (Comp. ¶7).

#### II. <u>DISCUSSION</u>

#### A. <u>GERACI HAS THE BURDEN OF PROOF IN OPPOSING COTTON'S MOTION TO</u> <u>EXPUNGE A LIS PENDENS PURSUANT TO CCP §405.32</u>.

DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*)

CCP §405.30 provides, in relevant part, as follows:

At any time after notice of pendency of action has been recorded, any party ... may apply to the court in which the action is pending to expunge the notice ... Evidence or declarations may be filed with the motion to expunge the notice. The court may permit evidence to be received in the form of oral testimony, and may make any orders it deems just to provide for discovery by any party affected by a motion to expunge the notice. The claimant shall have the burden of proof under Sections 405.31 and 405.32.

Thus, to avoid a motion to expunge under CCP §405.32, the burden is on the LP claimant - here,

Geraci – to establish the "probable validity" of the real property claim "by a preponderance of the

evidence." Id. "If conflicting evidence is presented, the judge must weigh the evidence in deciding

whether plaintiff has sustained its burden." Rutter Guide §9:436.2. As summarized and explained by

Miller & Starr, California Real Estate, Chapter 10, Section D.8 (December 2017 Update):

When expungement is sought on the basis that the real property claim lacks probable validity, the claimant who filed the lis pendens has the burden of proof by a preponderance of the evidence that the claim has probable validity. The resolution of this issue, unlike the "failure to plead" grounds for expungement, requires the court to examine the factual merits of the claim. Written evidence or declarations may be filed, and the court may permit oral testimony; the court also may authorize discovery by the party moving to expunge. It is not sufficient for the claimant merely to make a prima facie showing of probable validity; the demonstration of "probable validity" requires a determination that it is more likely than not that the claimant will obtain a judgment against the Cotton on the claim. The court is required to weigh the evidence and make a preliminary determination based on the evidence submitted, of whether it is more probable than not, that the claimant will prevail on its real property claim. This determination must be made based on a preponderance of evidence, with the claimant bearing the burden of proof. Thus, the current statute deliberately rejects former law that the trial court is not required to conduct a "minitrial" of the action on the merits and cannot resolve conflicts in the evidence, and requires a hearing on the merits of the same nature as an attachment proceeding or a claim and delivery proceeding. [Emphasis added; internal citations omitted.]

Expungement of an improper LP is mandatory, not discretionary - "the court shall order that the

notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim." CCP §405.32 (emphasis added). Geraci cannot

 $_{24}$  meet his burden of proof, thus, the *LP* must be expunged.

25

**B**.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

- <u>GERACI CANNOT ESTABLISH PROBABLE VALIDITY THAT THE RECEIPT IS THE</u> <u>FINAL AGREEMENT FOR COTTON'S PROPERTY</u>.
- 26

27

28

In his Complaint, pursuant to which the *LP* was filed, Geraci alleges the following four causes of action: (1) Breach of Contract ("<u>BOC</u>"); (2) Breach of the Covenant of Good Faith and Fair Dealing; (3)

Specific Performance; and (4) Declaratory Relief. (RJN 2.) The primary cause of action is the BOC (with

g

DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*)

1 the other causes arising therefrom), which is predicated solely on the allegation the Receipt is the final 2 written agreement for the purchase of the Property by Geraci. As alleged by Geraci in his Complaint: (i) "On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the 3 purchase and sale of the [Property] on the terms and conditions stated therein." (Comp. ¶7.); 4 (ii) "On or about November 2, 2016, [Geraci] paid to [Cotton] \$10,000 good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license, 5 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and 6 conditions of the written agreement." (Comp. ¶8.); and 7 (iii) "[Cotton] has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, [Cotton] has stated that, 8 contrary to the written terms, the parties agreed to a down payment... of \$50,000... [and] he is entitled to a 10% ownership interest in the [Property.]" (Comp. ¶11.) 9 Materially summarized, Geraci and Cotton are in accord that on November 2, 2016: (i) an 10 agreement was reached for the sale of the Property; (ii) Cotton received \$10,000 from Geraci; and (iii) a 11 12 document was executed by both parties on that day. However, the parties dispute what that executed document is. Cotton alleges the document, the Receipt, is just a "receipt" meant to memorialize his receipt 13 of the \$10,000. Geraci, on the other hand, alleges the Receipt is the "final written agreement" for his 14 purchase of the Property and that Cotton is lying about being entitled to a total \$50,000 NRD and a 10% 15 16 equity stake in the Property – terms not contained in the Receipt. Thus, the sole and case-dispositive issue in this action is a determination of whether the Receipt 17 is a "receipt" as Cotton alleges or a "final written agreement" for the Property as Geraci alleges. The 18 evidence is simple and clear. Geraci fraudulently induced Cotton into executing the Receipt; promising 19 20 to have Austin promptly reduce the November Agreement to writing for execution. Geraci schemed to acquire the Property by misrepresenting the Receipt as the final agreement for the Property if the CUP is 21 approved.<sup>6</sup> Alternatively, if the CUP is *denied*, Geraci can simply breach his promise to pay the \$40,000 22 23 <sup>6</sup> Cotton notes that for what Geraci alleges is a simple 3-sentence breach of contract suit, he has what appears to be, based on

24

DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (LIS PENDENS)

pleadings filed, at least three full-time attorneys from two separate and sizeable law firms - Ferris & Britton and Austin Legal Group – representing him and engaging in litigation and discovery tactics that are demonstratively oppressive. "Oppression 25 means the ultimate effect of the burden of responding to the discovery is incommensurate with the result sought. In considering

whether the discovery is unduly burdensome or expensive, the court takes into account 'the needs of the case, the amount in 26 controversy, and the importance of the issues at stake in the litigation.' (Code Civ. Proc., §2019.030, subd. (a)(2).)" People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552 (case citations omitted). As proven herein, this case lacks probable cause. Thus,

<sup>27</sup> given Cotton is financially destitute and with no legal background, traveling to and from a deposition and responding to even basic interrogatories and requests for admissions (while doing so pro se) is oppressive because (i) the "discovery sought is 28

unreasonably cumulative or duplicative" (CCP \$2019.030) as all material evidence is already in the record and (ii) "unduly burdensome [and] expensive, taking into account the needs of the case" (CCP §2019.030).

balance due on the NRD. But-for Cotton calling the City (discovering a CUP had been submitted in October of 2016), confronting Geraci about his lies and demanding him to perform or provide assurance of performance, Geraci's fraudulent scheme would have been successful.

"Fraud is a *defense* to breach of contract ... and the elements of contractual fraud are very similar to those of deceit. Courts analyzing tort cases often rely on contract cases (and vice versa), and may interchangeably cite the tortious deceit statutes (Civ.C. §§1709-1710) and contractual fraud statutes (Civ.C. §§1572-1573)." Rutter Guide, *Civil Procedure Before Trial, Claims & Defenses* ¶5:3 (*citing Pacesetter Homes, Inc. v. Brodkin* (1970) 5 Cal.App.3d 206, 210-211; *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 415; and 5 Witkin, *Summary of California Law*, Torts §767 (11<sup>th</sup> ed. 2017)).

10 Cotton, to prevail on this motion, must provide sufficient evidence to prove that Geraci will "more 11 likely than not" fail to "obtain a judgment against [Cotton] on the [BOC] claim." CCP §405.30. He can 12 do so by proving any one of the contractual fraud statutes for (i) Misrepresentation, (ii) Concealment, 13 (iii) False Promise or (iv) Other Deceptive Acts.<sup>7</sup> However, to not just prevail on this motion, but to 14 demonstrate the complete lack of probable cause underlying this suit and the intentional malicious filing 15 of the LP, Cotton establishes and proves the more difficult elements for the fraudulent tort of deceit and promissory fraud as defined by the California Supreme Court. In Lazar v. Superior Court (1996) 12 16 17 Cal.4th 631, 638 (internal citations and quotations omitted) the Court stated:

The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.

"Promissory fraud" is a subspecies of the action for fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. [¶] An action for promissory fraud may lie where a [plaintiff] fraudulently induces the [defendant] to enter into a contract.

24

23

18

19

20

21

22

1

2

3

4

5

6

7

8

9

25

26

27

execution of the Ownership Statement was required to resolve the Critical Zoning Issue; (2) the alleged

Misrepresentations. Geraci made, inter alia, the following misrepresentations: (1) Cotton's

fact"); Civ.C. § 1572(4) (<u>False Promise</u>: "A promise made without any intention of performing it"); Civ.C. §1572(5) (<u>Other</u> <u>Deceptive Act</u>: "Any other act fitted to deceive."; *see Wells v. Zenz* (1927) 83 Cal.App. 137, 140 (Describing this catchall provision as covering "all the multifarious means which human ingenuity can devise" and including deception by "surprise, trick, cunning, dissembling and unfairness.")).



<sup>&</sup>lt;sup>7</sup> Civ.C. §1572(1) (<u>Misrepresentation</u>: "The suggestion, as a fact, of that which is not true, by one who does not believe it to be true."); Civ.C. §1572(3) (<u>Concealment</u>: "The suppression of that which is true, by one having knowledge or belief of the

Critical Zoning Issue, unless first resolved with Geraci's unique and powerful political connections, prevented the submission of a CUP to the City; (3) he would pay Cotton the balance of the \$50,000 NRD before submitting the CUP to the City; (4) the Receipt would not be represented as the "final agreement" for the Property; (5) he would have his attorney, Austin, *promptly* reduce the November Agreement to writing; (6) he would provide Cotton a 10% equity stake in the MO; and (7) he would provide Cotton a minimum \$10,000 a month payment throughout the life of the MO (the "<u>Seven Primary Misrepresentations</u>").

<u>Knowledge of Falsity</u>. The (i) **undisputed** written admissions and communications **by** Geraci (most notably the Confirmation Email, the Confirmation Text, the Text Communications, and the March Request Email); (ii) the City Parcel Report; (iii) the fact the CUP was submitted by Geraci's agent, Berry, and accepted by the City in October 2016; and (iv) the language in the multiple drafts of the Purchase and Side Agreements prepared by Geraci's attorney, Austin, *after* November 2, 2016 clearly prove beyond any reasonable doubt that Geraci <u>knew</u> each of the Seven Primary Misrepresentations were false.

Intent to Defraud. Prior to the execution of any documents, Geraci provided his Qualification Representations and thereby characterized himself as a trustworthy, ethical, knowledgeable and politically influential individual that was uniquely positioned to help Cotton with resolving the Critical Zoning Issue and, consequently, getting a CUP approved on the Property. Thus, Geraci's Qualification Representations were material and had the intent and effect of deceiving Cotton into believing, relying and acting on Geraci's Seven Primary Misrepresentations.<sup>8</sup>

<u>Justifiable Reliance</u>. Based on Geraci's representations, it was reasonable and justifiable for Cotton to act as if Geraci was being truthful. "No rational party would enter into a contract anticipating that they are or will be lied to." *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993. Prior to discovering in March of 2017 that Geraci had submitted a CUP in October of 2016, Cotton, although upset at the lack of progress, had no reason to believe that Geraci was an unscrupulous individual. Thus, it was reasonable for Cotton to be induced by Geraci's representations into (i) executing the Ownership Statement, (ii) executing the Receipt, (iii) believing Geraci was diligently working on the

27 28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

<sup>&</sup>lt;sup>8</sup> See Whiteley v. Philip Morris, Inc. (2004) 117 Cal.App.4th 635, 678; 5 Witkin, Summary of California Law, Torts §808 (11th ed. 2017) (actual reliance is shown if the misrepresentation substantially influences a party's decision to act).

Critical Zoning Issue; (iv) believing Austin was working on reducing the November Agreement to writing
 for execution; and (v) forbearing from entering into a contract for the Property with a third-party<sup>9</sup>. It was
 not until Geraci refused to perform or even respond to Cotton's repeated requests for assurance of
 performance that Cotton justifiably terminated the November Agreement.<sup>10</sup>

5 Damage. It is impossible to convey in this action and motion the full scope of the irreparable and 6 unconscionable physical and psychological damage Geraci has caused Cotton.<sup>11</sup> However, at a 7 minimum, Cotton is entitled to compensation for all harm caused by Geraci's breach of contract that was 8 foreseeable. Civ.C. §3300. Some of Cotton's lost profits are recoverable as they were certain, under both 9 the November Agreement and the original Martin Sale Agreement, he was guaranteed a monthly minimum of \$10,000. Civ.C. §3301. Furthermore, "once a person willfully deceives another with intent 10 to induce him to alter his position to his injury, he 'is liable for any damage which he thereby suffers.' 11 12 (Civ.C. §1709.)" Fowler v. Fowler (1964) 227 Cal.App.2d 741, 748. Here, to finance this meritless 13 litigation, Cotton was forced to unconditionally sell his Property for a flat \$500,000 and he no longer has any equity or monthly payments even if the CUP is approved. (RJN 6, p.194.) 14

15

С.

16

17

18

#### ALL OF GERACI'S ARGUMENTS ARE MEANT TO DISTRACT THIS COURT FROM THE UNDISPUTED AND CASE-DISPOSITIVE NATURE OF THE CONFIRMATION EMAIL AND OTHER EVIDENCE PROVING THE RECEIPT IS JUST A RECEIPT.

A review of the record of this action, and the related Petition for Writ of Mandate action Cotton filed against the City of San Diego<sup>12</sup> reveals that Weinstein devotes the vast and overwhelming majority of his

19 arguments to describing in painstaking detail, and proving with voluminous supporting evidence, the

13

<sup>12</sup> Darryl Cotton v. City of San Diego (Case No. 37-2017-00037675-CU-WM-CTL).



DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*)

 <sup>&</sup>lt;sup>9</sup> "Forbearance – the decision not to exercise a right or power – is sufficient consideration to support a contract and to overcome the statute of frauds. [Citation.] It is also sufficient to fulfill the element of reliance necessary to sustain a cause of action for fraud or negligent misrepresentation." Small v. Fritz Companies, Inc. (2003) 30 Cal.4th 167, 174.

<sup>&</sup>lt;sup>22</sup> <sup>10</sup> Civ.C. § 1440; "[I]f a party to a contract expressly or by implication repudiates the contract before the time for his or her performance has arrived, an anticipatory breach is said to have occurred." *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 489; see I Witkin, Summary of California Law, Contracts §§861-868; *Restatement (Second) Contacts* §§250-257

 <sup>(</sup>Anticipatory breach—also called "anticipatory repudiation" and "prospective nonperformance"—occurs when a party whose
 performance is not yet due makes clear that it does not intend to perform.).

<sup>&</sup>lt;sup>11</sup> Cotton has filed a complaint in the United States District Court, Southern District of California which currently is pending before The Honorable Gonzalo Curiel (Case No. 3:18-cv-00325). The federal action is stayed pending resolution of this state action. Cotton has alleged causes of action against Mr. Geraci, Ms. Berry, Ms. Austin, Messrs. Weinstein and Toothacre, and

their respective law firms, Ferris & Britton and Austin Legal Group, for, *inter alia*, Civil Conspiracy and RICO. One of the primary issues in that suit will focus on whether Geraci had probable cause, in light of the Confirmation Email and the other

evidence presented herein, to bring forth this suit; see, generally, RJN 6 (Cotton's attempt, in a submission that was

procedurally an opposition to compel certain discovery requests, describe the challenges he has faced in this litigation and his relationship with counsel. His submission was supported by numerous declarations of individuals who interacted with him during the negotiations phase with Geraci and this litigation.).

significant amount of time, energy, resources and capital that Geraci has invested in seeking to have the CUP approved. This is meant to distract the Court from the <u>undisputed</u> and <u>case-dispositive</u> nature of the Confirmation Email, the Confirmation Text, the March Request Email, the Metadata Evidence and testimony presented herein that completely remove all probable cause to support Geraci's allegation that the Receipt is the final agreement for the Property. Geraci's lengthy descriptions of his self-serving performance cannot be the basis of granting him a right of ownership to Cotton's Property. But, it does serve to distract the Court by creating the illusion – because he has invested "more than \$300,000.00 on the CUP process" – that he would only do so if he had a legal right of ownership to the Property. (Comp. ¶9.)

Previously, Geraci filed a Demurrer to Cotton's Cross-Complaint arguing, *inter alia*, the Statute of Frauds ("<u>SOF</u>") and the Parol Evidence Rule ("<u>PER</u>") should prevent admission of some of the written communications, especially the Confirmation Email, between the parties referenced above. This Court properly denied Geraci's Demurrer. However, even assuming, *arguendo*, the Court had ruled otherwise in the first instance, Geraci's reliance on the SOF and the PER is misplaced. First, "The doctrine of estoppel to plead the statute of frauds may be applied where necessary to prevent either unconscionable injury or unjust enrichment." *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 27. Here, as described above, both unconscionable injury and unjust enrichment will occur if Geraci can misrepresent the Receipt as the final agreement for the Property. <u>Second</u>, the PER does not bar evidence of *fraudulent promises* at variance with terms of the writing: "[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud." *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n* (2013) 55 Cal.4th 1169, 1182 (quoting *Ferguson v. Koch* (1928) 204 Cal. 342, 347).

Notably, the California Supreme Court in *Riverisland* referenced *Tenzer*, *supra*, in reaching its holding: "*Tenzer* disapproved a 44-year-old line of cases to bring California law into accord with the Restatement Second of Torts, holding that a fraud action is not barred when the allegedly fraudulent promise is unenforceable under the statute of frauds. Considerations that were persuasive in *Tenzer* also support our conclusion here. The *Tenzer* court decided the Restatement view was better as a matter of policy. [Citation.] *It noted the principle that a rule intended to prevent fraud, in that case the statute of frauds, should not be applied so as to facilitate fraud*. [Citation.]" *Riverisland, supra*, at 1183

(emphasis added).

Litigation-hyperbole aside, it would be truly outrageous and violate all notions of justice, fairness and simple decency if Geraci could invoke the SOF or the PER to prevent his own written admissions proving his own fraud. Cotton has continuously sold and collateralized his remaining interest in the Property to finance this meritless litigation. If he loses – it is not an exaggeration, but a fact – Cotton will be destitute and homeless.<sup>13</sup>

#### IV. CONCLUSION

The Receipt is the *only* piece of evidence Geraci has *ever* produced which <u>APPEARS</u> to grant him a right of ownership to the Property. Setting aside the other evidence referenced above (Geraci's anticipatory breach of the November Agreement and the fraud), the Confirmation Email alone is indisputably dispositive on this issue – *the Receipt is just a "receipt" and not a "final written agreement" for the Property*. Geraci had no probable cause to file this action and "recorded [the] lis pendens... to coerce [Cotton] to settle regardless of the merits." *Hilberg, supra*, at 542 ("We cannot ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made ... to coerce an opponent to settle regardless of the merits.").

For the reasons forth above, Geraci cannot meet his burden and establish the probable validity that the Receipt is the final written agreement for the Property. Thus, respectfully, Cotton requests the Court order the LP be expunged, award Cotton his attorneys' fees and costs<sup>14</sup> (to be submitted by way of noticed motion upon this Court's ruling on this motion), and such other relief as this Court may find just and proper based on its factual findings at the hearing on this motion.

22 D

21

23

24

25

26

DATED: April 4, 2018

## THE LAW OFFICE OF JACOB AUSTIN

Bv JACOB P. AUSTIN

Attorney for Defendant and Cross-Complainant DARRYL COTTON

<sup>13</sup> DC Decl. ¶21; RJN 6, p.194 (Amendment to Martin Sale Agreement).

<sup>14</sup> Castro v. Superior Court (2004) 116 Cal.App.4th 1010, 1018 ("Under section 405.38, a prevailing party on a motion to expunge a lis pendens is *entitled* to recover attorney fees. The statute provides: 'The court *shall* direct that the *party prevailing* on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.' (§405.38, italics added.)"). [Emphasis in original.]

15



DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXP NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*)

| 1                     |   |   |
|-----------------------|---|---|
|                       | ×.<br>*   |   |
|                       |   | -24<br>   |
| 1<br>2<br>3<br>4<br>5 | Jacob P. Austin [SBN 290303]<br>The Law Office of Jacob Austin<br>1455 Frazee Road, #500<br>San Diego, CA 92108<br>Telephone: 619.357.6850<br>Facsimile: 888.357.8501<br>JPA@JacobAustinEsq.com<br>Attorney for Defendant and Cross-Complainant Dar |   |
| 6                     | [Representation Limited to Motion to Expunge L  | is Pendens]   |
| 7                     |   |   |
| 8                     | SUPERIOR COURT  |   |
| 9                     | COUNTY OF SAN DIEGO   | D – CENTRAL DIVISION                                      |
| 10                    | LARRY GERACI, an individual,  | CASE NO. 37-2017-00010073-CU-BC-CTL                       |
| 11                    | Plaintiff,  | CASE NO. 37-2017-00010073-CU-BC-CIL                       |
| 12                    |   | DARRYL COTTON'S DECLARATION IN                            |
| 13                    | VS.   | SUPPORT OF MOTION FOR EXPUNGEMENT                         |
| 14<br>15              | DARRYL COTTON, an individual; REBECCA<br>BERRY, an individual; and DOES 1-10, Inclusive,  | OF NOTICE OF PENDENCY OF ACTION<br>( <i>LIS PENDENS</i> ) |
| 16                    | Defendants.   | DATE: April 13, 2018                                      |
| 17                    |   | TIME: 9:00 a.m.<br>DEPT: C-72                             |
| 18                    | DARRYL COTTON, an individual,   | JUDGE: The Honorable Joel R. Wohlfeil                     |
| 19                    | Cross-Complainant,  |   |
| 20                    | vs.   |   |
| 21<br>22              | LARRY GERACI, and individual, REBECCA<br>BERRY, an individual; and DOES 1 through 10,<br>Inclusive,   |   |
| 23<br>24              | Cross-Defendants.   |   |
| 25<br>26              | I, Darryl Cotton ("Cotton" or "Defendant"), declare:  | х.  |
|                       | 1. I am the owner of record of the real   | property located at 6176 Federal Blvd., San Diego         |
| 27                    | (the " <u>Property</u> ").  |   |
| 28                    | 2. In or around August 2016, Geraci   | first contacted Cotton seeking to purchase the            |
|                       | DECLARATION OF DEFENDANT/CROSS COMPLAIN<br>OF NOTICE OF PENDENCY OF ACTION ( <i>LIS PENI</i>  |   |

Property. Geraci desired to buy the Property from Cotton because it met certain requirements of the City of San Diego ("<u>City</u>") to apply for and obtain a conditional use permit ("<u>CUP</u>") that would allow the operation of a Marijuana Outlet ("<u>MO</u>") at the Property. Over the ensuing months, we extensively negotiated the terms of a potential sale of the Property.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

3. During these negotiations, Geraci made the following representations to me: (i) he could be trusted as reflected by the fact that he operated in a fiduciary capacity as an IRS Enrolled Agent for many powerful and high-net-worth-individuals ("HNWI"); (ii) he is the owner and operator of Tax and Financial Center, Inc., an accounting and financial advisory services company, servicing HNWI and large businesses in a fiduciary capacity; (iii) he was a California Licensed Real Estate Broker, bound by professional and ethical obligations, to be truthful in real-estate deals; (iv) through his experts, who had conducted preliminary due diligence, he had uncovered a critical zoning issue that unless first resolved would prevent the City from even accepting a CUP application on the Property (the "Critical Zoning" Issue"); (v) through his professional relationships, which included his HNWI clients that were politically influential, and through powerful hired lobbyists (some of whom used to work for the City in senior positions), he was in a unique position to have the Critical Zoning Issue resolved; (vi) he was highly qualified to operate a MO because he owned and operated multiple cannabis dispensaries in San Diego; and (vii) his employee, Rebecca Berry ("Berry"), was a trustworthy individual that could be trusted to be the applicant on the CUP application because she (a) managed his marijuana dispensaries. (b) held a senior position at a church and came across as a "nice old lady that had nothing to do with marijuana," and (c), consequently, would pass the stringent City and State of California background checks required to have the CUP approved (collectively, the "Qualification Representations").

4. On or around October 31, 2016, Geraci asked me to execute Form DS-318 (Ownership Disclosure Statement) ("<u>Ownership Statement</u>") – a required component of all CUP applications. Geraci told me that he needed the executed Ownership Statement to show that he had access to the Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue.

5. On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the "<u>November Agreement</u>"). The November Agreement consisted of the following: If the CUP was <u>approved</u>, then Geraci would, *inter alia*, provide me: (i) a total purchase price of \$800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the CUP was <u>denied</u>, I would keep an agreed upon \$50,000 non-refundable deposit

DECLARATION OF DEFENDANT/CROSS COMPLAINANT IN SUPPORT OF MOTION FOR EXPUNGEMEN OF NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) AND FOR ATTORNEYS' FEES AND COSTS ("<u>NRD</u>") and the transaction would not close. In other words, the issuance of the CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the \$50,000 NRD.

6. At the November 2, 2016 meeting, we reached the November Agreement, Geraci: (i) provided me with \$10,000 in cash towards the NRD of \$50,000, for which I executed a document to record my receipt thereof (the "<u>Receipt</u>"); (ii) promised to have his attorney, Gina Austin ("<u>Austin</u>"), *promptly* reduce the oral November Agreement to written agreements for execution; and (iii) promised to not submit the CUP to the City until he paid me the balance on the NRD.

7. After Geraci and I met on November 2, 2016, reached the November Agreement, executed the Receipt and separated we had a series of email communications that took place that same day. Attached hereto as Exhibit 1 is a true and correct copy of all emails between Geraci and I.

8. The day I received a copy of the Receipt from Geraci, I realized it could be misconstrued as a final agreement for the Property. Because I was concerned, and wanted there to be no uncertainty, I requested Geraci confirm in writing the Receipt was not a final agreement. Geraci replied and I refer to this email from him as the "<u>Confirmation Email</u>."

9. Thereafter, over the course of almost five months, we exchanged numerous emails, texts and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of the final written agreements for the Property (included in Exhibit 1). However, Geraci continuously failed to make actual, substantive progress. Most notably, he failed to provide me the final written agreements, pay the balance of the NRD, and to provide facts regarding the progress being made on the Critical Zoning Issue.

10. Regarding the Critical Zoning Issue, Geraci and exchanged a series of texts. Attached hereto as Exhibit 2 is a true and correct copy of text messages between Geraci and I from January 6, 2017 and February 7, 2017.

11. These text communications made me think, among other things, that Geraci was being truthful about working on and making progress on the Critical Zoning Issue (the "<u>Text</u> <u>Communications</u>").

12. On March 3, 2017, I emailed Geraci regarding a draft agreement that was supposed to contain, *inter alia*, my 10% equity stake in the MO. Geraci did not reply to my email. Geraci did not pick up when I called later. I grew exasperated, and later followed-up with Geraci via text wanting to confirm that Geraci had received my email and understood my concern - that the Side Agreement did

not provide for my "10% equity position" in the MO.

13. On March 6, 2017, Geraci and I spoke regarding revisions required to have the drafts accurately reflect the November Agreement. I communicated my frustration with the delays and Geraci again promised to have Austin *promptly* correct the mistakes in the drafts. During that conversation, I let Geraci know that I would be attending a local cannabis event at which Austin was scheduled to be the headnote speaker. Geraci later texted me that I could speak with her directly at the event.

14. I was unable to attend the event that night. However, I had grown suspicious of Geraci because of his continuous failure to accurately have Austin reduce the November Agreement to writing. So, I had already set in place a contingency plan. I requested the help of Mr. Joe Hurtado, a financial transaction adviser, and asked him to help me locate a new buyer for the Property. I asked him to attend the event so that he could tell Austin I would not attend to discuss the revisions to the agreement and so he could confirm with her directly that Geraci and I had not executed a final written agreement yet.

15. On March 7, 2017, Geraci sent me an email. Attached to Geraci's email was a revised draft of the Side Agreement in Word format. The embedded metadata to the Word file of the agreement states the file was created "March 3, 2017" and the author of the document is "Gina Austin (the "<u>Metadata Evidence</u>"). Attached hereto as Exhibit 3 is a true and correct copy of screen shot of that Metadata Evidence.

16. On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci on March 7, 2017, and discovering that it again did not accurately reflect the November Agreement, I decided to follow up with the City regarding the Critical Zoning Issue personally. It was at this point that I discovered that Geraci had been lying from the very beginning – Geraci had submitted a CUP for the Property on October 31 2016, before we even reached the November Agreement. Submitted herewith with the accompanying Request for Judicial Notice is a copy of a Parcel Information Report provided by the City of San Diego, Development Services Department ("<u>City Parcel Report</u>") that states the zoning of the Property was changed to "**CO-2-1**" (MO qualifying zone) on January 14, 2016.

17. On March 21, 2017, because Geraci neither responded to my requests for assurance of performance, provide the November Agreement reduced to writing as required per the November Agreement, and I had found out that he had lied to me about numerous matters, I terminated the contract with Geraci via email.

18. Because I had already anticipated Geraci's breach from his evasive language and failure

DECLARATION OF DEFENDANT/CROSS COMPLAINANT IN SUPPORT OF MOTION FOR EXPUNGEMEN OF NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) AND FOR ATTORNEYS' FEES AND COSTS

to confirm he would honor his end of the bargain, I had already lined up another buyer and I entered into a written purchase agreement for the sale of the Property to Mr. Martin (the "Martin Sale Agreement").

19. The next day, Geraci's counsel, Michael Weinstein ("Weinstein"), emailed me the Complaint and the *lis pendens* filed on my Property.

On January 25, 2018, I attended a hearing before Judge Wohlfeil on a motion to compel 20. me to respond to certain discovery requests by Geraci. In my opposition to that motion, I described what I believed were the unethical actions by, inter alia, Austin and Weinstein. At the beginning of the hearing, Judge Wohlfeil told me that he knew them well and that he did not believe they would engage in the unethical actions I described in my opposition.

I have no other assets other than my Property. I have borrowed against the sale of the 21. Property. If I lose this litigation, even assuming I do not have to pay Geraci's legal fees, the equity I would receive does not cover the debt that I owe. I have long ago exhausted all personal and professional sources of capital. I am facing daily financial hardship. If I lose this property, I will have no means by which to subsist.

22. I underwent an Independent Psychiatric Assessment (the "IPA") with Dr. Markus Ploesser. Attached hereto as Exhibit 4 is a true and correct copy of the IPA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 4, 2018 at San Diego, California.

YL COTTON

1

2

3

4

5

6

7

355 DECLARATION OF DEFENDANT/CROSS COMPLAINANT IN SUPPORT OF MOTION FOR EXPUNGEMEN OF NOTICE OF PENDENCY OF ACTION (LIS PENDENS) AND FOR ATTORNEYS' FEES AND COSTS

# **EXHIBIT 1**

## E-MAILS BETWEEN COTTON AND GERACI 10/24/16 - 03/21/17

į

| NO.        | DATE     | TIME     | FROM   | то     | SUBJECT                     | ATTACHMENT   | PAGE #/<br>RANGE |
|------------|----------|----------|--------|--------|-----------------------------|--|------------------|
| 1          | 10/24/16 | 12:38 pm | Geraci | Cotton | Drawing                     | Yes '  | 1-2              |
|            |          |          |        |        |                             | A102 Site Plan –<br>Proposed<br>Scheme B.pdf   | 3                |
| 2          | 11/02/16 | 03:11 pm | Geraci | Cotton | Agreement                   | Yes  | 4-5              |
|            |          |          |        |        | •                           | Cotton & Geraci<br>Contract.pdf  | 6-8              |
| 3          | 11/02/16 | 06:55 pm | Cotton | Geraci | Agreement                   | No   | 9                |
|            |          | 09:13 pm | Geraci | Cotton | Agreement                   |  |                  |
| 4          | 11/14/16 | 10:26 pm | Geraci | Cotton | Federal Blvd needs sig ASAP | Yes  | 10-11            |
|            |          |          |        |        | ·<br>· ·                    | Authorization to<br>view and copy<br>Building Records<br>from the County of<br>San Diego Tax<br>Assessor.pdf | 12               |
| 5          | 02/27/17 | 08:49 pm | Geraci | Cotton | Federal Blvd Property       | Yes  | 13-14            |
|            |          |          |        |        |                             | 17-0226 Fed Blvd<br>Comm Purchase v3<br>(First Draft).pdf  | 15-40            |
| 6          | 03/02/17 | 08:51 am | Geraci | Cotton | Statement                   | Yes  | 41-42            |
|            |          |          |        |        |                             | 17-0227 Side<br>Agreement<br>unsigned.docx   | 43-48            |
| 7          | 03/03/17 | 08:22 am | Cotton | Geraci | Re: Statement               | Yes  | 49-50            |
|            |          |          |        |        |                             | IndaGro-GERL<br>Service Contract.doc   | 51-52            |
| 8          | 03/07/17 | 12:05 pm | Geraci | Cotton | Contract Review             | Yes  | 53-54            |
|            |          |          |        |        |                             | 17-0306 Side<br>Agreement<br>unsigned.docx   | 55-58            |
| 9          | 03/16/17 | 08:23 am | Cotton | Geraci | Re: Contract Review         | No   | 59-60            |
| 10         | 03/17/17 | 02:15 pm | Cotton | Geraci | Re: Contract Review         | No   | 61               |
| 11         | 03/18/17 | 01:43 pm | Geraci | Cotton | RE: Contract Review         | No   | 62-63            |
| 12         | 03/19/17 | 09:02 am | Cotton | Geraci | Re: Contract Review         | No   | 64               |
| 13         | 03/19/17 | 03:11 pm | Geraci | Cotton | RE: Contract Review         | No   | 65               |
| <u>1</u> 4 | 03/19/17 | 06:47 pm | Cotton | Geraci | Re: Contract Review         | No   | 66               |
| 15         | 03/21/17 | 03:18 pm | Cotton | Geraci | Re: Contract Review         | No   | 67               |

;

|  | Gmail |
|--|-------|
|--|-------|

#### Darryl Cotton <indagrodarryl@gmail.com>

| Drawing  |                                 |  |
|--|---------------------------------|--|
| arry Geraci <larry@tfcsd.net></larry@tfcsd.net>              |                                 | Mon, Oct 24, 2016 at 12:38 PM                |
| o: Darryl Cotton <darryl@inda-gro.com></darryl@inda-gro.com> | •                               |  |
|  |                                 |  |
|  | 4                               |  |
|  |                                 |  |
| Best Regards,  |                                 |  |
|  | X                               |  |
|  | :                               |  |
|  |                                 |  |
| Larry E. Geraci, EA  |                                 |  |
|  |                                 |  |
|  |                                 |  |
|  |                                 |  |
| Tax & Financial Center, Inc                                  |                                 |  |
|  |                                 | •.   |
| 5402 Ruffin Rd, Ste 200                                      |                                 |  |
| San Diego, Ca 92123  | : .                             |  |
|  |                                 |  |
|  |                                 |  |
| Web: Larrygeraci.com   | :                               |  |
| Bus: 858.576.1040  |                                 |  |
| Fax: 858.630.3900  |                                 |  |
|  |                                 |  |
|  | :                               |  |
|  |                                 | -  |
| Circular 230 Disclaimer:                                     | 1                               |  |
|  |                                 |  |
| IRS regulations require us to advise you that, unless        | s otherwise specifically noted. | any federal tax advice in this communication |

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

1 :

#### **Gmail** - Drawing

and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and ell ettechments.

From: darryl@dalbercia.us [mailto:darryl@dalbercia.us] On Behalf Of Darryl Cotton Sent: Monday, October 24, 2016 12:37 PM To: Larry Geraci <Larry@tfcsd.net> Subject: Test Send

Darryl Cotton, President



darryl@inda-gro.com www.inda-gro.com

Ph: 877.452.2244 Cell: 619.954.4447

Skype: dc.dalbercia

6176 Federal Blvd.

San Diego, CA. 92114

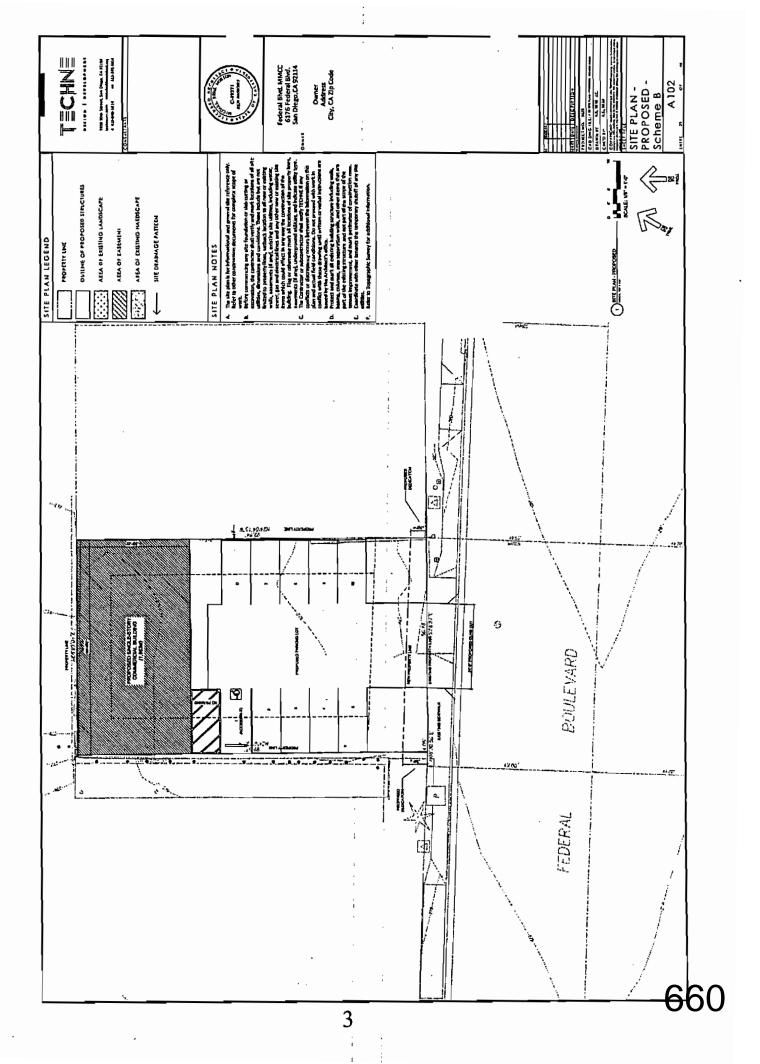
USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

A102 Site Plan - Proposed - Scheme B.pdf

659

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...



M Gmail

#### Darryl Cotton <indagrodarryl@gmail.com>

| Agreement  | I<br>I |                             |
|--|--------|-----------------------------|
| Larry Geraci <larry@tfcsd.net><br/>To: Darryl Cotton <darryl@inda-gro.com></darryl@inda-gro.com></larry@tfcsd.net> |        | Wed, Nov 2, 2016 at 3:11 PM |
| ·<br>·   |        |                             |
| Best Regards,  | !      |                             |
|  | 1      |                             |
|  | :      |                             |
|  | -      |                             |
| Larry E. Geraci, EA  | 1<br>} |                             |
|  |        |                             |
|  | •      |                             |
| Tax & Financial Center, Inc  | •<br>• |                             |
| 5402 Ruffin Rd, Ste 200  |        |                             |
| San Diego, Ca 92123  | ,      |                             |
|  | ·      |                             |
| Web: Larrygeraci.com   |        |                             |
| Bus: 858.576.1040  |        |                             |
| Fax: 858.630.3900  |        |                             |
|  |        |                             |
|  | :      |                             |

Circular 230 Disclaimer:

.1

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

#### Gmail - Agreement

return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

Cotton & Geraci Contract.pdf 71K

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larty Geraci

arryl Cotton

| ACKNOW   | LEDGMENT  |
|--|---|
|  |   |
| A notary public or other officer completing th<br>certificate verifies only the identity of the indi<br>who signed the document to which this certifi<br>attached, and not the truthfulness, accuracy,<br>validity of that document. | vidual<br>ficate is   |
| State of California<br>County of <u>San Diezu</u>  | ·   |
| On NOWEMBER 2, 2010 before me,   | (insert name and title of the officer)  |
| subscribed to the within instrument and acknow   | evidence to be the person(s) whose name(s) is/are<br>wledged to me that he/she/they executed the same in<br>by his/her/their signature(s) on the instrument the<br>he person(s) acted, executed the instrument. |
| I certify under PENALTY OF PERJURY under<br>paragraph is true and correct.   | the laws of the State of California that the foregoing  |
| WITNESS my hand and official seal.   | JESSICA NEWELL<br>Commission # 2002598<br>Notary Public - California<br>San Diego County<br>My Comm. Expires Jan 27, 2017   |
| Signature Jan Null   | (Seal)  |
|  |   |

.....

ţ

:

7

. . . . .

: . .

JESSIGA N/ WFG Commission # 2002538 Notary Public - Caldornia San Diego Chunky My Comm. Lypres Jan 27, 2017

. .,

÷

:.

. •3,

• • •

665

.

ş

1



#### Darryl Cotton <indagrodarryl@gmail.com>

hhh

| Re: Agreement  | i                                     |                             |
|--|---------------------------------------|-----------------------------|
| Larry Geracl <larry@tfcsd.net><br/>To: Darryl Cotton <darryl@inda-gro.com></darryl@inda-gro.com></larry@tfcsd.net> | , , , , , , , , , , , , , , , , , , , | Wed, Nov 2, 2016 at 9:13 PM |
| No no problem at all   |                                       |                             |
| Sent from my iPhone  | :                                     |                             |
| On Nov 2, 2016, at 6:55 PM, Darryl Cotton <  | darnyl@inda-gro.com                   | > wrote:                    |

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

Regards.

Darryl Cotton, President



darryl@inda-gro.com www.inda-gro.com Ph: 877.452.2244 Cell: 619.954.4447 Skype: dc.dalbercia

6176 Federal Blvd. San Diego, CA. 92114 USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

Gmail

| Federal Blvd need sig ASAP   | 1        |                               |
|--|----------|-------------------------------|
| _arry Geracl <larry@tfcsd.net><br/>Fo: Darry! Cotton <darry!@inda-gro.com></darry!@inda-gro.com></larry@tfcsd.net> | á<br>* . | Mon, Nov 14, 2016 at 10:26 AM |
| Hi Darryl,   | ,        |                               |
|  | ,        |                               |
| Can you sign and email back to r   | ne asap? |                               |
| Best Regards,  |          |                               |
|  |          |                               |
| Larry E. Geraci, EA  |          |                               |
|  | :        |                               |
| Tax & Financial Center, Inc  |          |                               |
| 5402 Ruffin Rd, Ste 200  | 1        |                               |
| San Diego, Ca 92123  | :        |                               |
| Web: Larrygeraci.com   | :        |                               |
| Bus: 858.576.1040  | i i      |                               |
| Fax: 858.630.3900  |          |                               |
|  |          |                               |
| Circular 230 Disclaimer:   |          |                               |
|  |          | _                             |
|  | 10       | 6                             |

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

#### Gmail - Federal Blvd need sig AP

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have raceived this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

ì

Authorization to view and copy Building Records from the County of San D....pdf 35K

## 668

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

i

÷ Signature Date ÷

M Gmail

Darryl Cotton <indagrodarryl@gmail.com>

### Federal Blvd Property

Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com> Mon, Feb 27, 2017 at 8:49 AM

67(

Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc* 5402 *Ruffin Rd, Ste* 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters It addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy It Immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

#### 17-0226 Fed Bivd Comm Purchase v3 (First Draft).pdf 347K

## 671

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

#### AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated \_\_\_\_\_, 2017, or its assignee ("Buyer").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. <u>DEFINITIONS</u>. For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property"**: That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. "Date of Agreement": The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price"**: The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars (\$400,000.00).

d. **"Due Diligence Period"**: The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. "Escrow Agent": The Escrow Agent is: [NAME]

f. "Title Company": The Title Company is: [NAME]

g. **"Title Approval Date":** The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. "Closing", "Closing Date" and "Close of Escrow": These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. "Notices" will be sent as follows to:

Buyer:

6176 Federal Blvd. Trust 6176 Federal Blvd.

#### 1 6176 Federal Blvd. Purchase Agreement

6/;

|                 | 1. ,<br>1  |
|-----------------|--|
|                 | San Diego, California 92114<br>Attn:<br>Fax No.:<br>Phone No.:                   |
| with a copy to: | Austin Legal Group, APC<br>3990 Old Town Ave, A-112<br>San Diego, CA 92110,      |
| Seller:         | Darryl Cotton<br>Address:<br>City, State, Zip<br>Attn:<br>Fax No.:<br>Phone No.: |
| Escrow Agent:   | [NAME]<br>[ADDRESS]  |

2. <u>PURCHASE AND SALE</u>. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "Improvements"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "Intangibles"). (Reference herein to the "Property" shall include the Real Property, Improvements, and Intangibles).

3. <u>PURCHASE PRICE AND PAYMENT; DEPOSIT</u>. The Purchase Price will be paid as follows:

a. <u>Deposit</u>. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. <u>Cash Balance</u>. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

#### 4. <u>ESCROW</u>.

Execution of Form Escrow Instructions. Seller shall deposit this Agreement a. with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "Escrow") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. <u>Close of Escrow</u>. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. <u>Failure to Receive CUP</u>. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "**Buyer's Indemnity**" (as detailed in Section 8 below).

5. <u>TITLE MATTERS</u>.

a. <u>Preliminary Title Report/Review of Title</u>. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "**Preliminary Title Report**"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. <u>Permitted Exceptions</u>. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

the Closing Date;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("Mandatory Cure Items").

c. <u>Title Policy</u>. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. <u>Title and Survey Costs</u>. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. <u>SELLER'S DELIVERY OF SPECIFIED DOCUMENTS</u>. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("**Property Information**"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. <u>DUE DILIGENCE</u>. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

#### 8. <u>PHYSICAL INSPECTION; BUYERS INDEMNITIES.</u>

Buyer shall have the right, upon reasonable notice and during regular a. business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. <u>COVENANTS OF SELLER</u>. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

#### 10. <u>REPRESENTATIONS OF SELLER</u>.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

## 6176 Federal Blvd. Purchase Agreement

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated ).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exists any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "Buyer's Representatives") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

#### 11. <u>REPRESENTATIONS AND WARRANTIES BY BUYER</u>.

#### a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. <u>DAMAGE</u>. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. <u>CONDEMNATION</u>. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Sellers loss of income prior to closing.

#### 14. <u>CLOSING</u>

a. <u>Closing Date</u>. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. <u>Seller's Deliveries in Escrow</u>. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

. .

(13) <u>Deed</u>. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "**Deed**").

(14) <u>Assignment of Intangible Property</u>. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) <u>Assignment and Assumption of Contracts</u>. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) <u>FIRPTA</u>. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) <u>Additional Documents</u>. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. <u>Buyer's Deliveries in Escrow</u>. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) <u>Purchase Price</u>. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) <u>Assumption of Intangible Property</u>. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) <u>Authority</u>. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) <u>Additional Documents</u>. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. <u>Closing Statements</u>. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

10

e. <u>Title Policy</u>. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. <u>Possession</u>. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. <u>Transfer of Title</u>. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

#### 15. <u>COSTS, EXPENSES AND PRORATIONS</u>.

- a. <u>Seller Will Pay</u>. At the Closing, Seller shall be charged the following:
  - (1) All premiums for an ALTA Standard Coverage Title Policy;
  - (2) One-half of all escrow fees and costs;
  - (3) Seller's share of prorations; and
  - (4) One-half of all transfer taxes.
- b. <u>Buyer Will Pay</u>. At the Closing, Buyer shall pay:
  - (1) All document recording charges;
  - (2) One-half of all escrow fees and costs;
  - (3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;
  - (4) One-half of all transfer taxes; and
  - (5) Buyer's share of prorations.
- c. <u>Prorations</u>.

(1) <u>Taxes</u>. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

<sup>11</sup> 

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) <u>Utilities</u>. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

#### 16. <u>CLOSING DELIVERIES</u>.

a. <u>Disbursements And Other Actions by Escrow Agent</u>. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) <u>Funds</u>. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) <u>Recording</u>. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed <u>after</u> recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

Buyer.

(3) <u>Title Policy</u>. Direct the Title Company to issue the Title Policy to

Duyer.

(4) <u>Delivery of Documents to Buyer or Seller</u>. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. <u>Seller's Default</u>. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

12 (

6176 Federal Blvd. Purchase Agreement

Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY b. COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

#### Seller's Initials Buyer's Initials

c. <u>Escrow Cancellation Following a Termination Notice</u>. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. <u>Other Expenses</u>. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "Escrow Cancellation Charges"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

#### 18. <u>MISCELLANEOUS</u>.

a. <u>Entire Agreement</u>. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. <u>Time</u>. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

#### 6176 Federal Blvd. Purchase Agreement

c. <u>Attomevs' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attomeys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attomeys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. <u>Interpretation of Agreement</u>. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

685

h. <u>Amendments</u>. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. <u>Drafts Not an Offer to Enter Into a Legally Binding Contract</u>. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. <u>No Third Party Beneficiary</u>. The provisions of this Agreement are not intended to benefit any third parties.

l. <u>Survival</u>. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. <u>Invalidity and Waiver</u>. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

Procedure for Indemnity. The following provisions govern actions for q. indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. <u>Execution in Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. <u>Section 1031 Exchange</u>. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. <u>Incorporation of Recitals/Exhibits</u>. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. <u>Partial Invalidity</u>. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. <u>Waiver of Covenants, Conditions or Remedies</u>. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. <u>Legal Advice</u>. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. <u>Memorandum of Agreement</u>. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

#### SIGNATURE PAGE FOLLOWS

17

6176 Federal Blvd. Purchase Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

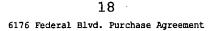
| BUYER:                  | SELLER:        |
|-------------------------|----------------|
| 6176 FEDERAL BLVD TRUST | DARRYL COTTON. |
| Ву:                     |                |
| Printed:                |                |
| Its: Trustee            |                |
|                         |                |

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: \_\_\_\_\_, 2017

Ву:

Escrow Officer



### EXHIBIT "A"

# LEGAL DESCRIPTION OF REAL PROPERTY (to be provided by the Title Company)

19 6176 Federal Blvd. Purchase Agreement

# 20 6176 Federal Blvd. Purchase Agreement

;

### EXHIBIT "B"

ļ

## PROPERTY INFORMATION

í

ł

i

•

a.

21 6176 Federal Blvd. Purchase Agreement

> 35 ;

-

#### 22 6176 Federal Blvd. Purchase Agreement

36

.

•

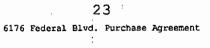
ł

## EXHIBIT "C"

ł

÷

### SERVICE CONTRACTS



37

• •

.

ł

ł

I

## EXHIBIT "D"

1

, 1

İ

ł

i

1

### THREATENED OR PENDING LAWSUITS

J

24 6176 Federal Blvd. Purchase Agreement

38

i

EXHIBIT "E"

.

1

Ч;

.

1

### MEMORANDUM OF AGREEMENT

;

.

τ

25 6176 Federal Blvd. Purchase Agreement

#### 6176 Federal Blvd. Purchase Agreement



Darryl Cotton <indagrodarryl@gmail.com>

| Statement<br>1 message   | : |                             |
|--|---|-----------------------------|
| Larry Geraci <larry@tfcsd.net><br/>To: Darryl Cotton <darryl@inda-gro.com></darryl@inda-gro.com></larry@tfcsd.net> |   | Thu, Mar 2, 2017 at 8:51 AM |
| Best Regards,  |   |                             |
| Larry E. Geraci, EA  |   |                             |
| Tax & Financial Center, Inc  | : |                             |
| 5402 Ruffin Rd, Ste 200<br>San Diego, Ca 92123   |   |                             |
| Web: Larrygeraci.com   |   | •<br>•                      |
| <b>Bus: 858.576.1040</b><br>Fax: 858.630.3900  |   |                             |
|  | • | ,                           |

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

#### Gmail - Statement

and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

17-0227 Side Agreement unsigned.docx 35K

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

#### SIDE AGREEMENT

Dated as of March \_\_\_\_, 2017

#### By and Among

#### **DARRYL COTTON**

#### and

#### 6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_\_ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

#### RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars (\$400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

#### **ARTICLE I**

#### 1. Terms of the Side Agreement

1

1.1. Buyer shall pay Four Hundred Thousand Dollars (\$400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

6176 Federal Blvd. Side Agreement

#### **ARTICLE II**

#### 2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

#### **ARTICLE III**

#### 3. General Provisions

3.1. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. <u>Time</u>. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. <u>Wire Instructions</u>. Buyer shall transmit Payment Price via wire transfer to the following account: \_\_\_\_\_\_, with the routing number or swift code of: \_\_\_\_\_\_, located at the following bank and address: \_\_\_\_\_\_.

3.4. <u>Attorneys' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

6176 Federal Blvd. Side Agreement

/01

3.6. <u>Governing Law</u>. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

;

L

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attomeys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. <u>Amendments</u>. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. <u>Drafts Not an Offer to Enter Into a Legally Binding Contract</u>. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3

3.11. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. <u>No Third Party Beneficiary</u>. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. <u>Invalidity and Waiver</u>. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust 6176 Federal Blvd. San Diego, California 92114 Attn: Fax No.: Phone No.:

with a copy to:

Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110

IF TO SELLER:

Darryl Cotton Address: City, State, Zip: Attn: Fax No.: Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. <u>Execution in Counterparts</u>. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. <u>Incorporation of Recitals/Exhibits</u>. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. <u>Waiver of Covenants, Conditions or Remedies</u>. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. <u>Legal Advice</u>. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

5

6176 Federal Blvd. Side Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

#### **BUYER:**

SELLER:

6176 FEDERAL BLVD. TRUST

DARRYL COTTON:

Ву:\_\_\_\_\_

Printed:

Its: Trustee



706

| Re: Statement   | i                                     |  |
|---|---------------------------------------|--|
| Darryl Cotton <indagrodarryl@gmail.com><br/>To: Larry Geraci <larry@tfcsd.net></larry@tfcsd.net></indagrodarryl@gmail.com>                              | , i<br>,                              | Fri, Mar 3, 2017 at 8:22 AM            |
| Larry,  | · .                                   |  |
| I read the Side Agreement in your attachment a position as per my Inda-Gro GERL Service Ag looks to avoid our agreement completely. It loo you explain? | reement (see attache                  | d) in the new store. In fact para 3.11 |
|   |                                       |  |
| On Thu, Mar 2, 2017 at 8:51 AM, Larry Geraci  | <larry@tfcsd.net> w</larry@tfcsd.net> | rote:                                  |
|   | :                                     |  |
|   | :                                     |  |
|   | . '                                   |  |
| Best Regards,   |                                       |  |
|   | ۲.                                    |  |
|   | i                                     |  |
| Larry E. Geraci, EA   | :                                     |  |
|   | :                                     |  |
|   |                                       |  |
|   |                                       |  |
| Tax & Financial Center, Inc   |                                       |  |
| 5402 Ruffin Rd, Ste 200   | i .                                   |  |
| San Diego, Ca 92123   | . ·                                   |  |
|   | :                                     |  |
|   | :                                     |  |
| Web: Larrygeraci.com  | :                                     |  |
| Bus: 858.576.1040   | 1                                     |  |
| Fax: 858.630.3900   | 6<br>                                 |  |
|   | :                                     |  |
|   |                                       |  |

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=iM8e9KVjh8k.en.&view=pt...

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858) 576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

IndaGro-GERL Service Contract.doc 691K

50



#### SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments 5402 Ruffin Road, Ste. 200 San Diego, CA 92103

Attn:Mr. Larry GeraciPh:858.956.4040E-mail:Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

- The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for \$400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.
- 2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.
- 3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.
- 4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of \$400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro \$200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, \$200,000.00 would become payable and due.
- 5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

Inda-Gro 6176 Federal Blvd., San Diego, CA 92114-1401 Toll Free: 877.452.2244 Local: 619.266.4004 www.inda-gro.com



GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

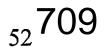
6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

#### TOTAL PRICE: Four Hundred Thousand and 00/100 (\$ 400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth hereIn:

| Sign:   |                          | Print Name: |        | Date: |
|---------|--------------------------|-------------|--------|-------|
|         | Darryl Cotton, President |             |        |       |
|         |                          |             | ,      |       |
| Sign: _ |                          | Print Name: | 1      | Date: |
|         | Larry Geraci             |             |        |       |
|         |                          | :           | r      |       |
|         |                          | 1           |        |       |
|         |                          |             |        |       |
|         |                          | 1           |        |       |
|         |                          |             | 1<br>3 |       |
|         |                          | 1           |        |       |
|         |                          |             | l      |       |
|         |                          |             | ,      |       |
|         |                          |             |        |       |
|         |                          |             |        |       |
|         |                          | (           | ;      |       |
|         |                          | •<br>•<br>• |        |       |
|         |                          |             |        |       |
|         |                          | 1           |        |       |
|         |                          | i           |        |       |

Inda-Gro 6176 Federal Blvd., San Diego, CA 92114-1401 Toll Free: 877.452.2244 | Local: 619.266.4004 www.inda-gro.com





#### **Contract Review**

Tue, Mar 7, 2017 at 12:05 PM

Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com>

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

710

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or metters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

17-0306 Side Agreement unsigned v2.docx 38K

#### SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated \_\_\_\_\_\_, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

#### RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller \$400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

#### ARTICLE I SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars (\$400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the  $10^{th}$  day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than \$5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and \$10,000.00 a month for each month thereafter the Business is operating on the Property.



#### ARTICLE II GENERAL TERMS

2. <u>Entire Agreement</u>. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. <u>Time</u>. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. <u>Termination</u>. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. <u>Attorneys' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. <u>Governing Law</u>. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. <u>Confidentiality and Return of Documents</u>. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. <u>Amendments</u>. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

1 '



2.10. <u>No Third Party Beneficiary</u>. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. <u>Invalidity and Waiver</u>. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

1

IF TO BUYER:

6176 Federal Blvd. Trust Address: City, State, Zip: Attn: Fax No.: Phone No.:

with a copy to:

Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110

1F TO SELLER:

Darryl Cotton Address: City, State, Zip: Attn: Fax No.: Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

6176 Federal Blvd, Side Agreement

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. <u>Execution in Counterparts</u>. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. <u>Incorporation of Recitals/Exhibits</u>. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. <u>Legal Advice</u>. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

#### **BUYER: SELLER:**

6176 FEDERAL BLVD. TRUST

**DARRYL COTTON:** 

715

Printed:

Its: Trustee

6176 Federal Blvd. Side Agreement



#### Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Thu, Mar 16, 2017 at 8:23 PM

716

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those
  items that are to require my consent can be standard minority consent rights, but basically that my
  consent is required for large decisions like the issuance of employee bonus and for agreements with

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."

- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attomey, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

60



#### **Re: Contract Review**

1 message

Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Fri, Mar 17, 2017 at 2:15 PM

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

M Gmail

| RE: Contract Review 1 message  |  |
|--|--|
| Larry Geraci <larry@tfcsd.net><br/>To: Darryl Cotton <indagrodarryl@gmail.com></indagrodarryl@gmail.com></larry@tfcsd.net> | Sat, Mar 18, 2017 at 1:43 Pt                           |
|  | :  |
| Darryl,  |  |
| I have an attorney working on the situation now. I w<br>timing will play a factor.   | will follow up by Wednesday with the response as their |
|  |  |
|  |  |
|  |  |
| Best Regards,  |  |
|  | 1  |
|  | ,  |
| Larry E. Geraci, EA  |  |
|  |  |
|  |  |
| Tax & Financial Center, Inc  |  |
| 5402 Ruffin Rd, Ste 200  |  |
| San Diego, Ca 92123  |  |
|  |  |
| Web: Larrygeraci.com   |  |
| Bus: 858.576.1040  |  |
| Fax: 858.630.3900  |  |
|  |  |
|  | 2 7  |
| 6  | Ζ Ι  |

.

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arranga for the return or destruction of this facsimile and all attachments.

720



| Re: Contract Review 1 message  | ·<br>· |                              |
|--|--------|------------------------------|
| Darryl Cotton <indagrodarryl@gmail.com><br/>To: Larry Geraci <larry@tfcsd.net></larry@tfcsd.net></indagrodarryl@gmail.com> | •      | Sun, Mar 19, 2017 at 9:02 AM |
| Larry,   | i      |                              |

I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=lr-NdqmOTUs.en.&view=...

Gmail

| RE: Contract Review  | н<br>Н<br>Н<br>Н   |  |
|--|--|--|
| arry Geraci <larry@tfcsd.net><br/>o: Darry! Cotton <indagrodarry!@gmail.com></indagrodarry!@gmail.com></larry@tfcsd.net>   | 1  | Sun, Mar 19, 2017 at 3:11 PM   |
| Darryl,  | ÷  |  |
|  |  |  |
| At this point, you keep changing your mind ev<br>agreement as planned. Any signed written ag<br>about any deposit, it's about you changing wh<br>will move forward with an agreement.  | reement will be fo   | lowed by the letter of the law. It's not   |
| As to lying about the status, read the comme<br>addressing this currently with the city. I have I  |  |  |
|  | 1  |  |
| To: 'Abhay Schweitzer' <abhay@techne-us.co<br>Subject: PTS 520606 - Federal Boulevard MN<br/>Importance: High</abhay@techne-us.co<br>  |  |  |
| Good Afternoon,  |  |  |
| I am the Development Project Manager assigned to   |  |  |
| (Commercial Office) Zone. Please note that per the<br>Cooperative is not a permitted use in this Zone and  |  | nending denial of this application.  |
|  | staff will be recomr<br>s of the subject appli<br>mendation of denia                         | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recorr   | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recom-<br>processing of the application would be charged to t  | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recom-<br>processing of the application would be charged to t<br>Please notify me at your earliest convenience of you    | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recom-<br>processing of the application would be charged to to<br>Please notify me at your earliest convenience of you   | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recom-<br>processing of the application would be charged to the<br>Please notify me at your earliest convenience of your | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recom-<br>processing of the application would be charged to the<br>Please notify me at your earliest convenience of your | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recom-<br>processing of the application would be charged to the<br>Please notify me at your earliest convenience of your | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recom-<br>processing of the application would be charged to the<br>Please notify me at your earliest convenience of your | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |
| Cooperative is not a permitted use in this Zone and<br>Pease advise if you wish to continue the processing<br>could schedule a hearing immediately with a recom-<br>processing of the application would be charged to the<br>Please notify me at your earliest convenience of your | staff will be recomm<br>of the subject appli<br>umendation of denial<br>he deposit account a | cation through the full review process, or staff<br>. Please note that all costs associated with the |



#### **Re: Contract Review**

1 message

Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Sun, Mar 19, 2017 at 6:47 PM

Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.



#### **Re: Contract Review**

1 message

Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Tue, Mar 21, 2017 at 3:18 PM

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete" phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

!

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

## EXHIBIT 2

i

٠

#### Friday, March 3, 2017

## 12:16 PM Did you get my email? Yes I did I'm having her rewrite it now -----As soon as I get it I will forward it to you 12:17 PM Monday, March 6, 2017 Gina Austin is there she has a red jacket on if you want to have a conversation with her 4:30 PM Tuesday, March 7, 2017 - , Just sent the contract over 12:05 PM Ill look it over tonight 12:10 PM Thursday, March 16, 2017 How's it going with the : .;\* contract? 4:47 PM Friday, March 17, 2017 Can we meet tomorrow 11:44 AM Enter message (::21

|   | That sounds good.<br>10:15 AM speak later?   | Can we              |
|---|--|---------------------|
|   | Not done intel 1030 tonight<br>am tomorrow   | 11:27 AM            |
|   |  | 12:16 PM            |
|   | Wednesday, February 15, 2017   |                     |
|   | Good morning Darrell We are preparing the documents with the attor   |                     |
| : | ney and hopefully will have<br>them by the end of this week  | 8:25 AM             |
|   | 1:00 PM SO   | unds good           |
|   | Wednesday, February 22, 2017   |                     |
|   | Contract should be ready in a couple days  | 11:38 AM            |
|   | Thursday, February 23, 2017  |                     |
|   | Can you call me when you ge<br>a chance thanks   | t<br>2:38 PM        |
|   | Monday, February 27, 2017  |                     |
|   | Good morning Darrell I<br>emailed you the contract<br>for the purchase of the<br>propertythe relocation<br>contract will come sometime |                     |
|   | today  | 8:50 AM             |
|   | Hi Larry I'm traveling<br>I will have a chance<br>at that tomorrow an<br>forward it to my atte<br>10:04 AM thank you                   | to look<br>d I will |

| Wednesday, January 18, 2017  |
|--|
| L The sign off date they said it's going to be the 30th 10:27 AM   |
| This resolves the zoning<br>10:34 AM issue?  |
| L) Yes 10:36 AM  |
| 11:03 AM Excellent   |
| - Monday, January 30, 2017   |
| L On phone Call you back shortly 3:50 PM   |
| 3:50 PM OK   |
| Tuesday, January 31, 2017  |
| 2:47 PM How goes it?   |
| L We're waiting for<br>confirmation today at about 4<br>o'clock 2:48 PM  |
| Monday, February 6, 2017   |
| 12:15 PM Whats new?  |
| Tuesday, February 7, 2017  |
| Based on your last text I<br>thought you'd have some<br>information on the zoning by<br>now. Your lack of response<br>suggests no resolution as of<br>8:19 AM yet. |
| L I'm just walking in with clients<br>they resolved it it's fine<br>we're just waiting for final<br>paperwork 8:20 AM  |

-----

ĺ

#### 🕶 🖾 \ominus 🖸 🔎 🖬 📭 🚥 🛜 🕲 🚥 🖇 🛜 🔺 67% 🖬 5:43 PM

### Larry Geraci

8589564040

#### SMS/MMS

Wednesday, January 4, 2017

Hi Daryl I have the extreme case of the flu and I'm in bed I'll try to call you tomorrow or the next day

12:20 PM

#### 12:20 PM Get bettet and ttyl

Thursday, January 5, 2017

## 8.52 AM Any better?

Friday, January 6, 2017

### Can you call me. If for any reason you're not moving 8:40 AM forward I need to know.

I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to

call you later today still very sick

9:51 AM

Friday, January 13, 2017

#### Are you available for a call?

10:46 AM

#### I'm in a meeting I'll call you when I'm done

10:47 AM

10:47 AM Thx

## 17-0306 Side Agreement unsigned v2 Properties

### General Security Details

| Property                 | Value                 |  |
|--------------------------|-----------------------|--|
| Description              |                       |  |
| Title                    |                       |  |
| Subject                  |                       |  |
| Tags                     |                       |  |
| Categories               |                       |  |
| Comments                 |                       |  |
| Origin                   |                       |  |
| Authors                  | Gina Austin           |  |
| ast saved by             | AEA                   |  |
| Revision number          | 4                     |  |
| Version number           |                       |  |
| <sup>D</sup> rogram name | Microsoft Office Word |  |
| Company                  | HP                    |  |
| Manager                  |                       |  |
| Content created          | 3/6/2017 3:48 PM      |  |
| Date last saved          | 3/6/2017 5:05 PM      |  |
| _ast printed             |                       |  |
| Total editing time       | 01/22/00              |  |
| Content                  |                       |  |



**EXHIBIT 3** 

# EXHIBIT 4

Case No .:

#### IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION ONE

#### DARRYL COTTON Defendant and Appellant,

v.

The Superior Court of California, County of San Diego, Respondent. LARRY GERACI, an individual, REBECCA BERRY, an individual, CITY OF SAN DIEGO, a public entity, Real Parties in Interest.

Appeal from Orders of the Superior Court, County of San Diego

37-2017-00010073-CU-BC-CTL 37-2017-00037675-CU-WM-CTL

Honorable Joel R. Wohlfeil, Judge Presiding

INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRIT, WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

> Darryl Cotton 6176 Federal Blvd. San Diego, CA 92114 Telephone: (619) 954-4447 Appellant, Self-Represented

| 1                | I, Markus Ploesser, MD, LLM, DABPN, FRCP(C), declare:  |
|------------------|--|
| 2                | 1. On March 4, 2018, I interviewed Mr. Darryl Cotton for an Independent  |
| 3                | Psychiatric Assessment. At the beginning of the assessment, I informed Mr. Cotton  |
| 4                | that the assessment was being prepared to assist the Court and not to act as an advocate   |
| 6                | on his behalf. Mr. Cotton expressed his understanding, agreement and proceeded with  |
| 7                | the interview and assessment.  |
| 8                |  |
| 9                | DUTY TO COURT  |
| 10               | 2. I certify that I am aware of my duty as an expert to assist the Court and   |
| 11               | not to be an advocate for any party. I have prepared this report in conformity with that   |
| 12<br>13         | duty. I will provide testimony in conformity with that duty if I am called upon to   |
| 14               | provide oral or written testimony.   |
| 15               | 3. I am solely responsible for the opinions provided in this report. I reserve   |
| 16               | the right to amend or alter my opinions should additional relevant information become  |
|                  |  |
| 18               | available after the report completion.   |
| 1 <u>9</u><br>20 | <b>QUALIFICATIONS</b>  |
| 21               | 4. I am a psychiatrist licensed in the State of California, Physician and  |
| 22               | Surgeon License No. A101564 and the Province of British Columbia, License No.  |
| 23               | 31564.   |
| 24               |  |
| 25               |  |
| 26<br>27         | in the area of Psychiatry (Certificate No. 60630) and the subspecialty of Forensic   |
| 28               | -1-  |
| -0               | INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS<br>PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRT.<br>WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF |

÷.

٠

. ....

Psychiatry (Certificate No. 1903). 1 2 6. I am a Fellow of the Royal College of Physicians and Surgeons of Canada, 3 with certifications in Psychiatry and Forensic Psychiatry. 4 7. I am on the clinical faculty at the University of British Columbia (UBC) 5 6 in the division of Forensic Psychiatry. 7 8. My prior work experience has included forensic psychiatric evaluation 8 work for the Forensic Psychiatric Hospital and the Forensic Psychiatric Services 9 10 Commission in Coquitlam, British Columbia. I have written numerous forensic 11 psychiatric assessment reports and testified as an expert witness before the British 12 Columbia Review Board and the Provincial Courts of British Columbia. 13 14 I currently work as a psychiatrist for the Department of Corrections for 9. 15 the State of California. 16 In addition to my medical qualifications, I am also a graduate of Columbia 10. 17 18 University School of Law in the LLM program. 19 In preparation for my assessment of Mr. Cotton, I consulted with Dr. 11. 20 Carolyn Candido regarding her medical diagnosis of Mr. Cotton on December 13, 21 2017. Additionally, I reviewed the declaration previously provided by Dr. Candido 22 23 regarding her diagnosis of Mr. Cotton prepared on January 22, 2018. (Attached hereto 24 as Exhibit 1.) 25 Prior to my interview with Mr. Cotton, I also discussed the factual 26 12. 27 - 2 -28 INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARK PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDII WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

background regarding Mr. Cotton's need for a psychiatric assessment with his legal
 consultant, Mr. Jacob Austin. Mr. Austin, I was told, is representing Mr. Cotton on a
 limited basis due to Mr. Cotton's inability to pay for his full legal representation by
 Mr. Austin.

# 6

27

28

### **<u>CLIENT INTERVIEW</u>**

<sup>7</sup>
<sup>13.</sup> Mr. Cotton related the following: He is 57 years old. He was born and
<sup>9</sup> raised in the Chicago area and has lived in San Diego since 1980. He owns a lighting
<sup>10</sup> manufacturing company but reports that over the past approximately 9-12 months he
<sup>11</sup> has experienced financial hardship, stress and anxiety originating from a lawsuit
<sup>13</sup> against him.

14 14. Mr. Cotton denies any history of mental health symptoms predating the 15 current lawsuit. He is taking Keppra 500mg twice daily for a seizure disorder, which 16 he started suffering from around the age of 26. He usually suffers from approximately 17 18 3 Grand Mal seizures per year. He used to take Dilantin, another anticonvulsant 19 medication. He reports having obtained significant medical benefit from the use of 20 medical cannabis, particularly a high CBD strain which he says has helped to reduce 21 22 the frequency of his seizures.

23
24
25 by the City of San Diego and the State of California that would allow the creation and
26 operation of a Medical Marijuana Consumer Collective.

INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRT WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

-3.

16. Mr. Cotton reports that he has and is being subjected to a variety of threats
 and harassing behaviors that he believes have been directed against him by the plaintiff
 in the lawsuit.

Mr. Cotton believes that an armed robbery on June 10th, 2017 on his 17. 5 6 property may have been directed by the plaintiff. He was present at his property at the 7 time of the armed robbery, slamming the door and thereby escaping the robbers inside 8 a building on his property while he called 911. The armed individuals who committed 9 10 the robbery threatened Mr. Cotton at gun-point before fleeing from the premises. (Mr. 11 Cotton stated the armed-robbery is still unresolved by the police and it was the subject 12 of local news coverage that is still available online.) 13

14 18. Mr. Cotton states he followed the armed individuals in his vehicle as they
15 fled from the scene while he was on the phone with 911. He was told by 911 to cease
16 his pursuit due to safety reasons as Mr. Cotton was chasing the armed robbers at high18 speed. Mr. Cotton believes he recognized the driver of the getaway vehicle as an
19 employee of the plaintiff.

19. Mr. Cotton appeared particularly intense during his narration regarding
one of his employees who was duct-taped and laying face down at gun-point on the
ground. Mr. Cotton states that this long-time employee, an electrical-engineer who Mr.
Cotton relied upon heavily, quit the next day because of this incident.

26 27

28

4

20. Mr. Cotton describes starting to experience increased symptoms of stress

and anxiety since the robbery, above that which was caused by the litigation. He had been in his usual state of health prior. He reports that he is now unable to sleep at night, experiences "mood swings" and episodes of explosive rage without apparent triggers. He experiences nightmares around themes of feeling powerless. The nightmares occur 6 in slight variations, and at times he "sees the robbers in his dreams."

ł

2

3

4

5

28

- 7 Furthermore, his description of his nightmares include vivid scenes of 21. 8 violence towards the attorneys for plaintiff that he believes are not acting in a 9 10 professional manner. Mr. Cotton believes that the attorneys representing plaintiff are 11 "in it together" with the plaintiff to use the lawsuit to "defraud" him of his property. 12 This point is one of the main foci of his expressed mental distress. 13
- 14 Mr. Cotton's distress due to his perception of a conspiracy against him by 22. 15 attorneys is amplified by what he believes is the Court's disregard for the evidence and 16 arguments he has presented. He states he has never been provided the reasoning for the 17 denial of any relief he sought. Mr. Cotton expressed that at certain points during the 18 19 course of the litigation he believed the trial court judge was part of the perceived 20 conspiracy against him. 21

Mr. Cotton is also under the belief that his former law firm could have 22 23. 23 resolved this matter at an early stage in the proceedings but chose not to in order to 24 continue billing legal fees. Ź5

Mr. Cotton reports no improvement in his mental health symptoms since 26 24. 27

the robbery. He describes that since the robbery there have been additional threats made 1 2 against him by "agents" of the plaintiff. Specifically, he describes that two associates 3 of plaintiff went to his property on February 3, 2017 under the pretense of discussing 4 potential business opportunities, but when they arrived they were there to indirectly 5 6 threaten him by informing him that it would be "good" for him to "settle with Geraci." 7 25. Mr. Cotton now feels hopeless, helpless, unable to sleep, with decreased 8 appetite, but either no or only minimal changes in weight. 9 10 26. Mr. Cotton states that on December 12, 2017, immediately after a court 11 hearing, he was evaluated in the emergency department of a hospital for a TIA 12 (transitory ischemic attack, a frequent precursor of a stroke). 13 14 27. The day after his emergency department discharge, Mr. Cotton states he 15 assaulted a third-party and that is also the day he was diagnosed with Acute Stress 16 Disorder by Dr. Candido. 17 18 Mr. Cotton expressed having experienced suicidal ideation, most recently 28. 19 on December 13th, 2017. He denied symptoms of psychosis, specifically 20 hallucinations. 21 **OPINIONS AND RECOMMENDATIONS** 22 23 It is my professional opinion that Mr. Cotton currently meets criteria of 29. 24 Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and 25 Major Depression (F32.2). He does not present with any objective, observable signs 26 27 28 INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

and symptoms of psychosis. 1 2 30. Given the absence of a prior mental health history of psychotic disorder 3 (and the physical symptoms that led to a diagnosis of a TIA and Acute Stress Disorder 4 by separate medical doctors), I have no reason to believe that Mr. Cotton's reports of 5 б harassment by the plaintiff would be of delusional quality. It is my professional opinion 7 that Mr. Cotton sincerely believes that the plaintiff and his counsel are in a conspiracy 8 against him and that they represent a threat to his life. 9 10 It is my medical opinion that Mr. Cotton's symptoms are unlikely to 31. 11 improve as long as current stressors (pending litigation, and what Mr. Cotton believes 12 to be threatening behaviors by plaintiff or his "agents") persist. His symptoms are also 13 14 likely to be significantly reduced if he believes the Court was not ignoring and 15 disregarding him. 16 It is my medical opinion that Mr. Cotton's mental health condition would 32. 17 likely benefit from a rapid resolution of current legal proceedings. In my professional 18 19 opinion, the level of emotional and physical distress faced by Mr. Cotton at this time 20 21

<sup>20</sup>
<sup>21</sup> is above and beyond the usual stress on any defendant being exposed to litigation. If
<sup>22</sup> causative triggers and threats against Mr. Cotton persist, there is a substantial
<sup>23</sup> likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental
<sup>24</sup> health.

26

27

28

INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WR WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

-7.

| 1        | 33. Besides a removal of current stressors, his mental health condition would   |
|----------|---|
| 2        | likely benefit from Cognitive Behavioral Therapy for PTSD and depression, as well as  |
| 3        | a trial of antidepressant medication.   |
| 4        |   |
| 5        | I declare under penalty of perjury under the laws of the State of California  |
| 6        | that the foregoing is true and correct.   |
| 7<br>8   | Minkus Miller   |
| 8<br>9   | DATED:<br>3/4/2018 Markus Ploesser, MD, LLM, DABPN, FRCP(C)   |
| 10       | 21772010  |
| 11       | M. PLOESSER, M.D.   |
| 12       | PSYCHIATRIST  |
| 13       |   |
| 14       |   |
| 15       |   |
| 16       |   |
| 17       |   |
| 18<br>19 |   |
| 20       |   |
| 21       |   |
| 22       |   |
| 23       |   |
| 24       |   |
| 25       |   |
| 26       |   |
| 27<br>28 | - 8 -   |
| 28       | INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MADKUS<br>PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY |
|          | WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF  |

. .

| Jacob P. Austin, SBN 290303<br>The Law Office of Jacob Austin<br>1455 Frazee Road, #500<br>San Diego, CA 92108<br>Telephone: 619.357.6850<br>Facsimile: 888.357.8501<br>JPA@JacobAustinEsq.com<br>Attorney for Defendant and Cross-Complainant Darr | ryl Cotton   |
|---|--|
| [Representation Limited to This Motion to Expun   | 5  |
| SUPERIOR COURT  | OF CALIFORNIA  |
| COUNTY OF SAN DIEGO   |  |
|   |  |
| LARRY GERACI, an individual,  | CASE NO. 37-2017-00010073-CU-BC-CTL  |
| Plaintiff,  | REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF:   |
| DARRYL COTTON, an individual; REBECCA<br>BERRY, an individual; and DOES 1-10, Inclusive,  | DARRYL COTTON'S MOTION TO EXPUNGE<br>NOTICE OF PENDENCY OF ACTION<br>( <i>LIS PENDENS</i> );   |
| Defendants.   | AND  |
| DARRYL COTTON, an individual,<br>Cross-Complainant,<br>vs.<br>LARRY GERACI, and individual, REBECCA<br>BERRY, an individual; and DOES 1 THROUGH<br>10, Inclusive,<br>Cross-Defendants.  | <ul> <li>DARRYL COTTON'S <i>EX PARTE</i></li> <li>APPLICATION FOR ORDERS (1)</li> <li>SHORTENING TIME FOR HEARING ON</li> <li>DARRYL COTTON'S MOTION TO EXPUNGE</li> <li>NOTICE OF PENDENCY OF ACTION (<i>LIS PENDENS</i>), AND (2) COMPELLING</li> <li>ATTENDANCE AND TESTIMONY OF</li> <li>LARRY GERACI</li> <li>Ex Parte Hrg: April 5, 2018 at 8:30 a.m.</li> <li>Motion Hrg: April 13, 2018 at 9:00 a.m.</li> <li>Dept: C-73</li> <li>Judge: Honorable Joel R. Wohlfeil</li> </ul> |
| Defendant and Cross-Complainant Darryl Co   | otton requests that this Court take judicial notice of   |
| the following documents served and filed submitted h  | nerewith in support of his Motion to Expunge Notice  |
| of Pendency of Action (Lis Pendens):  |  |
| 11  |  |

1 741 DARRYL COTTON'S REQUEST FOR JUDICIAL NOTICE ISO MOTION TO EXPUNGE *LIS PENDENS* AND *EX PARTE* APPLICATION FOR ORDERS (1) SHORTENING TIME & (2) COMPELLING ATTENDANCE & TESTIMONY

| TAB NO. | <b>DOCUMENT TITLE/DESCRIPTION</b>  |  |
|---------|--|--|
| 1.      | Verified Petition for Alternative Writ of Mandate [Code Civ. Proc., § 1085] filed by<br>Plaintiff on October 6, 2017   |  |
| 2.      | Plaintiff's Complaint for: 1. Breach of Contract; 2. Breach of the Covenant of Good Fait<br>and Fair Dealing; 3. Specific Performance; and 4. Declaratory Relief filed March 2<br>2017   |  |
| 3.      | City of San Diego, Development Services Department Information Bulletin 170 (October 2017) (City Information Bulletin describing "the application process for a Marijuana Outlet")).   |  |
| 4.      | Ownership Disclosure Statement – Form DS-318   |  |
| 5.      | City of San Diego Development Services Department Parcel Information Report – Repo<br>Number 101 dated March 20, 2018  |  |
| 6.      | Verified Memorandum of Points and Authorities in Support of Darryl Cotton's Response<br>to (1) Motion by Plaintiff/Cross-Defendant Larry Geraci and Cross-Defendant Rebecca<br>Berry to Compel the Deposition of Darryl Cotton and (2) Motion by Real Parties in<br>Interest, Larry Geraci and Rebecca Berry, to Compel the Deposition of Darryl Cotton<br>filed January 22, 201 |  |
| DATED:  | April 4, 2018 THE LAW OFFICE OF JACOB AUSTIN   |  |
|         | ByJacob MAA<br>Jacob P. Austin<br>Attorney for Defendant and Cross-Complainant<br>DARRYL COTTON  |  |
|         | DARKIE COTTON  |  |
|         |  |  |
|         |  |  |
|         |  |  |
|         |  |  |
|         |  |  |
|         |  |  |
|         |  |  |
|         |  |  |
|         |  |  |

# **EXHIBIT 1**

| 1  | DAVID S. DEMIAN, SBN 220626<br>E-MAIL: ddemian@ftblaw.com<br>ADAM C. WITT, SBN 271502     |  |  |
|----|---|--|--|
| 2  | E-MAIL: awitt@ftblaw.com<br>FINCH, THORNTON & BAIRD, LLP                                  |  |  |
| 3  | ATTORNEYS AT LAW<br>4747 EXECUTIVE DRIVE - SUITE 700                                      |  |  |
| 4  | SAN DIEGO, CALIFORNIA 92121-3107<br>TELEPHONE: (858) 737-3100                             |  |  |
| 5  | FACSIMILE: (858) 737-3101   |  |  |
| 6  | Attorneys for Petitioner/Plaintiff Darryl Cotton  |  |  |
| 7  |   |  |  |
| 8  | SUPERIOR COURT OF T   | HE STATE OF CALIFORNIA                                   |  |
| 9  | FOR THE COUN  | TY OF SAN DIEGO  |  |
| 10 | CENTRA  | L DIVISION   |  |
| 11 | DARRYL COTTON, an individual,   | CASE NO:   |  |
| 12 | Petitioner/Plaintiff,   | VERIFIED PETITION FOR                                    |  |
| 13 | v.  | ALTERNATIVE WRIT OF MANDATE<br>[CODE CIV. PROC., § 1085] |  |
| 14 | CITY OF SAN DIEGO, a public entity; and   |  |  |
| 15 | DOES 1 through 25,  |  |  |
| 16 | Respondents/Defendants,   |  |  |
| 17 | REBECCA BERRY, an individual;   |  |  |
| 18 | LARRY GERACI, an individual; and<br>ROES 1 through 25,                                    |  |  |
| 19 | Real Parties In Interest.   |  |  |
| 20 |   |  |  |
| 21 | INTRODUCTION  |  |  |
| 22 | 1. Pursuant to Code of Civil Procedure section 1085, petitioner/plaintiff Darryl          |  |  |
| 23 | Cotton ("Cotton") seeks an alternative writ of mandate and a peremptory writ of mandate   |  |  |
| 24 | directing respondents/defendants City of San Diego ("City") and DOES 1 through 25 to: (1) |  |  |
| 25 | recognize Cotton, the sole record owner of the  | e real property located at 6176 Federal Boulevard,       |  |
| 26 | San Diego, California 92105 ("Property"), as  | the sole applicant with respect to Conditional           |  |
| 27 | Use Permit Application – Project No. 520606   | ("Cotton Application") for a Conditional Use             |  |
| 28 | Permit ("CUP") to operate a Medical Marijuar  | na Consumer Cooperative ("MMCC") at the                  |  |
|    | VERIFIED PETITION FOR ALTERNATIVE WRIT (  | DF MANDATE [CODE CIV. PROC., § 1085] 744                 |  |

| 1                              | Property; and (2) process the Cotton Application with Cotton as the sole applicant. In the       |  |  |
|--------------------------------|--|--|--|
| 2                              | alternative, Cotton seeks an order to show cause directed to the City as to why the Court should |  |  |
| 3                              | not issue such a writ.   |  |  |
| 4                              | 2. The relief sought in paragraph 1 is proper because Cotton has no other plain,                 |  |  |
| 5                              | speedy, or adequate legal remedy. The relief is necessary because the City's refusal to          |  |  |
| 6                              | recognize Cotton as the sole applicant on the Cotton Application is lacking in evidentiary       |  |  |
| 7                              | support and inconsistent with the City's legal duty.   |  |  |
| 8                              | JURISDICTION, VENUE, AND PARTIES   |  |  |
| 9                              | 3. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure             |  |  |
| 10                             | section 1085.  |  |  |
| 11                             | 4. Venue is proper in this Court because the City is a public entity located in this             |  |  |
| 12                             | judicial district and the property at issue is located in this judicial district.                |  |  |
| 13                             | 5. Petitioner/plaintiff Cotton is, and at all times mentioned was, an individual                 |  |  |
| 14                             | living and doing business in California.   |  |  |
| 15                             | 6. Respondent/defendant City is, and at all times mentioned was, a public entity                 |  |  |
| 16                             | organized and existing under the laws of California.   |  |  |
| 17                             | 7. Cotton is informed and believes real party in interest Rebecca Berry ("Berry")                |  |  |
| 18                             | is, and at all times mentioned was, an individual living and doing business in the County of     |  |  |
| 19                             | San Diego.   |  |  |
| 20                             | 8. Cotton is informed and believes real party in interest Larry Geraci ("Geraci") is,            |  |  |
| 21                             | and at all times mentioned was, an individual living and doing business in the County of San     |  |  |
| 22                             | Diego.   |  |  |
| 23                             | 9. Cotton does not know the true names and capacities of the                                     |  |  |
| 24                             | respondents/defendants named as DOES 1 through 25 and, therefore, sues them by fictitious        |  |  |
| 25                             | names. Cotton is informed and believes DOES 1 through 25 are in some way responsible for         |  |  |
| 26                             | the events described in this petition or impacted by them. Cotton will seek leave to amend this  |  |  |
| 27                             | petition when the true names and capacities of these parties have been ascertained.              |  |  |
| 28                             | 2  |  |  |
| NTON &<br>_P<br>utive<br>9 700 | VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085] 745                  |  |  |
| .92121                         | - $        -$  |  |  |

1 10. At all times mentioned each respondent/defendant was an agent, principal,
 representative, alter ego, and/or employee of the others and each was at all times acting within
 the course and scope of said agency, representation, and/or employment and with the
 permission of the others.

11. Cotton does not know the true names and capacities of the real parties in interest
named as ROES 1 through 25 and, therefore, names them by fictitious names. Cotton is
informed and believes ROES 1 through 25 are in some way responsible for the events
described in this petition or impacted by them. Cotton will seek leave to amend this petition
when the true names and capacities of these parties have been ascertained.

10 12. At all times mentioned each real party in interest was an agent, principal,
11 representative, alter ego, and/or employee of the others and each was at all times acting within
12 the course and scope of said agency, representation, and/or employment and with the
13 permission of the others.

#### 14

#### BACKGROUND

15 13. In or around August 2016, Geraci first contacted Cotton seeking to purchase the
Property. Geraci desired to buy the Property from Cotton because it meets certain
requirements of the City for obtaining a CUP to operate a MMCC at the Property. The
Property is one of a very limited number of properties located in San Diego City Council
District 4 that potentially satisfy the CUP requirements for a MMCC.

20 14. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. Cotton, acting in good faith based upon 21 22 Geraci's representations during the sale negotiations, assisted Geraci with preliminary due 23 diligence in investigating the feasibility of a CUP application at the Property while the parties 24 negotiated the terms of a possible deal. However, despite the parties' work on a CUP 25 application, Geraci represented to Cotton that a CUP application for the Property could not 26 actually be submitted until after a critical zoning issue was resolved or the application would 27 be summarily rejected by the City.

FINCH, THORNTON & BAIRD, LLP 4747 Executive Drive - Sulte 700 San Diego, CA 92121 (858) 737-3100

28

1 15. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership 2 Disclosure Statement, which is a required component of all CUP applications. Geraci told 3 Cotton that he needed the signed document to show that Geraci had access to the Property in connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of 4 5 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement 6 as an indication of good-faith while the parties negotiated on the sale terms. At no time did 7 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering 8 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly 9 maintained to Cotton that the critical zoning issue needed to be resolved before a CUP 10 application could even be submitted.

11 16. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in 12 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However, 13 Cotton has never met Berry personally and never entered into a lease or any other type of 14 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who 15 was very familiar with MMCC operations and who was involved with his other MMCC 16 dispensaries. Cotton's understanding was that Geraci was unable to list himself on the 17 application because of Geraci's other legal issues but that Berry was Geraci's agent and was 18 working in concert with him and at his direction. Based upon Geraci's assurances that listing 19 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton 20 executed the Ownership Disclosure Statement that Geraci provided to him. A true and correct 21 copy of the CUP application, including the Ownership Disclosure Statement, is attached hereto as Exhibit 1. 22

23242526

27

28

17. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to negotiate the final terms of their deal for the sale of the Property. The parties reached an agreement on the material terms for the sale of the Property. The parties further agreed to cooperate in good faith to promptly reduce the complete agreement, including all of the agreed-upon terms, to writing.

4

FINCH, THORNTON & BAIRD, LLP 4747 Executive Drive - Sulte 700 San Diego, CA 92121 (858) 737-3100

| 1     | 18. At the November 2, 2016 meeting, the parties executed a three-sentence   |  |  |
|-------|--|--|--|
| 2     | document related to their agreement on the purchase price for the Property at Geraci's request,  |  |  |
| 3     | which read as follows:   |  |  |
| 4     | Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for   |  |  |
| 5     | a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)  |  |  |
| 6     | Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is |  |  |
| 7     | approved. Darryl Cotton has agreed not to enter into any other contacts on this property.  |  |  |
| 8     | property.  |  |  |
| 9     | A true and correct copy of the November 2, 2016 agreement is attached hereto as Exhibit 2.   |  |  |
| 10    | Geraci assured Cotton that the document was intended to merely create a record of Cotton's   |  |  |
| 11    | receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement on   |  |  |
| 12    | the purchase price and good-faith agreement to enter into final integrated agreement documents   |  |  |
| 13    | related to the sale of the Property. A true and correct copy of the November 2, 2016 email is  |  |  |
| 14    | attached hereto as Exhibit 3.  |  |  |
| 15    | 19. Thereafter, Cotton continued to operate in good faith under the assumption that  |  |  |
| 16    | Geraci's attorney would promptly draft the fully integrated agreement documents as the parties   |  |  |
| 17    | had agreed and the parties would shortly execute the written agreements to document their  |  |  |
| 18    | agreed-upon deal. However, over the following months, Geraci proved generally unresponsive   |  |  |
| 19    | and continuously failed to make substantive progress on his promises, including his promises   |  |  |
| 20    | to promptly deliver the draft final agreement documents, pay the balance of the non-refundable   |  |  |
| 21    | deposit, and keep Cotton apprised of the status of the zoning issue.   |  |  |
| 22    | 20. Over the weeks and months that followed, Cotton repeatedly reached out to  |  |  |
| 23    | Geraci regarding the status of the zoning issue, the payment of the remaining balance of the   |  |  |
| 24    | non-refundable deposit, and the status of the draft documents. For example, between January  |  |  |
| 25    | 18, 2017 and February 7, 2017, the following exchange took place between Geraci and Cotton   |  |  |
| 26    | via text message:  |  |  |
| 27    | /////  |  |  |
| 28    | 5  |  |  |
| FON & | 5  |  |  |
| 700   | VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085]  |  |  |

FINCH, THORNTON & BAIRD, LLP 4747 Executive Drive - Suite 700 San Diego, CA 92121 (858) 737-3100

| 1                   | Geraci: "The sign off date they said it's going to be the 30th."   |
|---------------------|--|
| 2                   | <u>Cotton</u> : "This resolves the zoning issue?"<br><u>Geraci</u> : "Yes"<br>Cotton: "Eventionat"   |
| 3                   | <u>Cotton</u> : "Excellent"  |
| 4                   | <u>Cotton</u> : "How goes it?"<br><u>Geraci</u> : "We're waiting for confirmation today at about 4 o'clock"  |
| 5                   | <u>Cotton</u> : "Whats new?"   |
| 6                   | <u>Cotton</u> : "Based on your last text I thought you'd have some information on the  |
| 7                   | zoning by now. Your lack of response suggests no resolution as of yet."<br><u>Geraci</u> : "I'm just walking in with clients they resolved it its fine we're just<br>waiting for final paperwork." |
| 8                   |  |
| 9                   | The above communications between Geraci and Cotton regarding the zoning issue conveyed to  |
| 10                  | Cotton that the issue had still not yet been fully resolved at that time. Geraci had previously  |
| 11                  | represented to Cotton that the CUP application could not be submitted until the zoning issue   |
| 12                  | was resolved. As it turns out, Geraci's representations were untrue and he knew they were  |
| 13                  | untrue as he had already submitted the CUP application months prior.   |
| 14                  | 21. With respect to the promised final agreement documents, Geraci continuously  |
| 15                  | failed to timely deliver the documents as agreed. On February 27, 2017, nearly three months  |
| 16                  | after the parties reached an agreement on the terms of the sale, Geraci finally emailed Cotton a   |
| 17                  | draft real estate purchase agreement. However, upon review, the draft purchase agreement was   |
| 18                  | missing many of the key deal points agreed upon by the parties at their November 2, 2016   |
| 19                  | meeting. After Cotton called Geraci for an explanation, Geraci claimed it was simply due to  |
| 20                  | miscommunication with his attorney and promised to have her revise the agreement to  |
| 21                  | accurately reflect their deal points.  |
| 22                  | 22. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side   |
| 23                  | agreement that was to incorporate other terms of the parties' deal. Cotton immediately   |
| 24                  | reviewed the draft side agreement and emailed Geraci the next day regarding certain missing  |
| 25                  | and inaccurate material terms.   |
| 26                  | ////   |
| 27                  |  |
| 28                  | 6  |
| TON &<br>P<br>ive   | 6  |
| ivə<br>700<br>92121 | VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085]  |

FINCH, THORNTON & BAIRD, LLP 4747 Executive Drive - Suite 700 San Diego, CA 92121 (858) 737-3100

| 1  | 23. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement   |  |
|--|---|--|
| 2  | along with a further request to change material terms of the parties' deal. Cotton, increasingly  |  |
| 3  | frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on   |  |
| 4  | March 16, 2017 in an email which included the following:  |  |
| 5  | We started these negotiations 4 months ago and the drafts and our   |  |
| 6  | communications have not reflected what agreed upon and are still far from<br>reflecting our original agreement. Here is my proposal, please have your attorney  |  |
| 7  | Gina revise the Purchase Agreement and the Side Agreement to incorporate all<br>the terms we have agreed upon so that we can execute final versions and get this<br>alogad Plagas confirm by Monday 12:00 RM whether we are on the same range |  |
| 8  | closed Please confirm by Monday 12:00 PM whether we are on the same page<br>and you plan to continue with our agreement If, hopefully, we can work<br>through this please confirm that revised final drafts that incorporate the terms        |  |
| 9<br>10  | through this, please confirm that revised final drafts that incorporate the terms will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.                   |  |
| 11   | 24. On the same day, Cotton contacted the City's Development Project Manager  |  |
| . 12   | responsible for CUP applications. At that time, Cotton discovered for the first time that   |  |
| 13   | Geraci had submitted a CUP application for the Property way back on October 31, 2016,   |  |
| 14   | <u>before the parties even agreed upon the final terms of their deal and contrary to Geraci's</u>   |  |
| 15   | express representations over the previous five months. Cotton expressed his   |  |
| 16   | disappointment and frustration in the same March 16, 2017 email to Geraci:  |  |
| 17   | I found out today that a CUP application for my property was submitted in   |  |
| 18 October, which I am assuming is from someone conne<br>note that you told me that the \$40,000 deposit balance | October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be          |  |
| 19   | resolved. Which is not the case.  |  |
| 20<br>21   | 25. On March 17, 2017, after Geraci requested an in-person meeting via text   |  |
| 21   | message, Cotton replied in an email to Geraci which including the following:  |  |
| 22   |   |  |
| 23   |   |  |
| 25   |   |  |
| 26   |   |  |
| 27   |   |  |
| 28   |   |  |
| FINCH, THORNTON &<br>BAIRD, LLP<br>4747 Executive  | 7   |  |
| Drive - Suite 700<br>San Diego, CA 92121<br>(858) 737-3100   | VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085] 750   |  |

1 I would prefer that until we have final agreements that we converse exclusively via email. My greatest concern is that you get a denial on the CUP application 2 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that 3 you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them 4 resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31 2016 BEFORE we even signed 5 our agreement on the 2nd of November... Please confirm by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting 6 completely the below) by Wednesday at 12:00 PM. 7 Geraci did not provide the requested confirmation that he would honor their agreement or 8 proffer the requested agreements prior to Cotton's deadlines. 9 26. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was 10terminated and that Geraci had no interest in the Property. 11 27. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"), 12 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first 13 time that the three-sentence document signed by the parties on November 2, 2016 constituted 14 the parties' complete agreement regarding the Property, contrary to the parties' further 15 agreement the same day, the entire course of dealings between the parties, and Geraci's own 16 statements and actions. 17 28. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci 18 intended to continue to pursue the CUP application and would be posting notices on Cotton's 19 property. Cotton responded via email the same day and objected to Geraci or his agents 20 entering the Property and reiterated the fact that Geraci has no rights to the Property. 21 29. On May 12, 2017, Cotton filed a cross-complaint against Berry and Geraci 22 including causes of action for breach of contract, intentional misrepresentation, negligent 23 misrepresentation, and false promise with respect to the purchase agreement and the CUP application. 24 25 30. On September 22, 2017, Cotton, through his attorneys, demanded the City 26 remove Berry from the Cotton Application and process it for Cotton. A true and correct copy 27 of the September 22, 2017 letter is attached hereto as Exhibit 4.

FINCH, THORNTON & BAIRD, LLP 4747 Executive Drive - Suite 700 San Diego, CA 92121 (858) 737-3100

28

8

| 1   | 30. The City responded via email on September 29, 2017, but did not agree to   |  |  |
|---|--|--|--|
| 2   | 2 remove Berry from the Cotton Application and process it on behalf of Cotton. A true and  |  |  |
| 3   | correct copy of the September 29, 2017 email is attached hereto as Exhibit 5.  |  |  |
| 4   | FIRST CAUSE OF ACTION  |  |  |
| 5   | (Writ of Mandate – Against all respondents/defendants and all real parties in interest)  |  |  |
| 6   | 31. Cotton incorporates by reference paragraphs 1 through 30 above as though set   |  |  |
| 7   | forth in full at this point.   |  |  |
| 8   | 32. The City is subject to California law. The City is further responsible for   |  |  |
| 9   | administering the CUP process according to the San Diego Municipal Code ("Municipal  |  |  |
| 10  | Code"), and is obligated to perform the ministerial duties of: (1) recognizing Cotton as the sole  |  |  |
| 11  | applicant for the Cotton Application, as required under Municipal Code sections 112.0102 and   |  |  |
| 12  | 2 113.0103, and (2) processing the Cotton Application with Cotton as the sole applicant and  |  |  |
| 13  | financially responsible party.   |  |  |
| 14  | 4 33. As the record owner of the Property, Cotton has a clear, present, legal and  |  |  |
| 15  | beneficial right in seeing that the City follows the Municipal Code and California law and   |  |  |
| 16  | recognizes the correct applicant with respect to the Cotton Application.   |  |  |
| 17  | 34. Cotton has no plain, speedy and adequate remedy in the ordinary course of law,   |  |  |
| 18  | other than the writ by this petition. Cotton has exhausted all available administrative remedies,  |  |  |
| 19  | if any, available to him. The only means by which Cotton may compel the City to follow the   |  |  |
| 20  | 0 Municipal Code and California law is this petition for a writ of mandate.  |  |  |
| 21  | 1 INDEX OF EXHIBITS  |  |  |
| 22  | Exhibit Description  |  |  |
| 23  | 1CUP application incl. Ownership Disclosure Statement2November 2, 2016 agreement   |  |  |
| 24  | <ul> <li>3 Email dated November 2, 2016 between Cotton and Geraci</li> <li>4 Letter dated September 22, 2017 from Cotton to the City</li> </ul>        |  |  |
| 25 <u>4 Letter dated September 22, 2017 from Cotton to the City</u><br>5 Email dated September 29, 2017 from City to Cotton |  |  |  |
| 26  |  |  |  |
| 27  | ////   |  |  |
| 28<br>FINCH, THORNTON &   | 9  |  |  |
| BAIRD, LLP<br>4747 Executive<br>Drive - Sulte 700<br>San Diego, CA 92121<br>(858) 737-3100                                  | BAIRD, LLP<br>4747 Executive<br>Drive - Suite 700<br>San Diego, CA 92121 VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085] 7 |  |  |
|   |  |  |  |

|  | · ·  |   |
|--|--|---|
| 1  | <u>PRAYER FOR RELIEF</u>   |   |
| 2  | 2 WHEREFORE, Cotton prays as follows:  |   |
| 3  | ON ALL CAUSES OF ACTION:   |   |
| 4  | 1. For a writ of mandate to be issued  | under Code of Civil Procedure section 1085,         |
| 5  | and under seal of this Court, ordering the City to recognize Cotton as the sole applicant with |   |
| 6  | respect to the Cotton Application and to process t   | he Cotton Application with Cotton as the sole       |
| 7  | applicant;   |   |
| 8  | 2. In the alternative, for an order to sl  | how cause directed to the City as to why the        |
| 9  | Court should not issue such a writ; and  |   |
| 10   | 3. For such other or further relief the  | Court deems just.                                   |
| 11   | DATED: October 6, 2017 I   | Respectfully submitted,                             |
| 12   | I  | FINCH, THORNTON & BAIRIP, LLP                       |
| 13   |  | ./X I.n./   |
| 14<br>15   |  | By:DAVID S DEMIAN<br>ADAM C. WITT                   |
| 16   |  | Attorneys for Petitioner/Plaintiff DARRYL<br>COTTON |
| 17   |  |   |
| 18   |  |   |
| 19   |  | •   |
| 20   |  |   |
| 21   |  |   |
| 22   |  |   |
| 23   | · · ·  |   |
| 24   |  |   |
| 25   |  |   |
| 26   |  |   |
| 27   | 2403.002/3BX3360.hjg   |   |
| 28<br>FINCH, THORNTON &<br>BAIRD, LLP  | 10   | ·   |
| 4747 Executive<br>Drive - Suite 700<br>San Diego, CA 92121<br>(858) 737-3100 | 4747 Executive<br>Drive - Suite 700<br>an Diego, CA 92121                                      |   |

| 1  | VERIFICATION   |
|--|--|
| 2  | I, Darryl Cotton, have read this VERIFIED PETITION FOR ALTERNATIVE WRIT                            |
| 3  | OF MANDATE [CODE CIV. PROC., § 1085], and I am familiar with its contents. I am                    |
| 4  | informed and believe the matters stated therein are true and on that basis verify that the matters |
| 5  | stated therein are true.   |
| 6  | I declare under penalty of perjury under the laws of the State of California that the              |
| 7  | above is true and correct to the best of my knowledge.   |
| 8  | Executed on October 6, 2017 in San Diego, California.  |
| 9  | Des 111  |
| 10   | DarryleCotton  |
| 11   |  |
| 12   |  |
| 13   |  |
| 14   |  |
| 15   |  |
| 16   |  |
| 17   |  |
| 18   |  |
| 19   |  |
| 20   |  |
| 21   |  |
| 22   |  |
| 23   |  |
| 24   |  |
| 25   |  |
| 26   |  |
| 27   |  |
| 28   | 11   |
| FINCH, THORNTON &<br>BAIRD, LLP<br>4747 Executive<br>Drive - Suite 700 |  |
| San Diego, CA 92121<br>(858) 737-3100                                  | VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085]                        |

# **EXHIBIT 2**

ELECTRONICALLY FILED Superior Court of California, County of San Diego

03/21/2017 at 10:11:00 AM

|    | Clerk of the Superior Court<br>By Carla Brennan,Deputy Clerk  |  |  |
|----|---|--|--|
| 1  | FERRIS & BRITTON  |  |  |
| 2  | A Professional Corporation<br>Michael R. Weinstein (SBN 106464)<br>Scott H. Toothacre (SBN 146530)    |  |  |
| 3  | 501 West Broadway, Suite 1450   |  |  |
| 4  | San Diego, California 92101<br>Telephone: (619) 233-3131  |  |  |
| 5  | Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com   |  |  |
| 6  | stoothacre@ferrisbritton.com  |  |  |
| 7  | Attorneys for Plaintiff<br>LARRY GERACI   |  |  |
| 8  | SUPERIOR COURT  | OF CALIFORNIA  |  |
| 9  | COUNTY OF SAN DIEGO   | D, CENTRAL DIVISION                                  |  |
| 10 | LARRY GERACI, an individual,  | Case No. 37-2017-00010073-CU-BC-CTL                  |  |
| 11 | Plaintiff,  | PLAINTIFF'S COMPLAINT FOR:                           |  |
| 12 | v.  | 1. BREACH OF CONTRACT;                               |  |
| 13 | DARRYL COTTON, an individual; and   | 2. BREACH OF THE COVENANT OF<br>GOOD FAITH AND FAIR  |  |
| 14 | DOES 1 through 10, inclusive,<br>Defendants.  | DEALING;<br>3. SPECIFIC PERFORMANCE; and             |  |
| 15 | Defendants.   | 4. DECLARATORY RELIEF.                               |  |
| 16 | Plaintiff, LARRY GERACI, alleges as follow  | /s:  |  |
| 17 | 1. Plaintiff, LARRY GERACI ("GER  | ACI"), is, and at all times mentioned was, an        |  |
| 18 | individual residing within the County of San Diego,   | State of California.                                 |  |
| 19 | 2. Defendant, DARRYL COTTON ("C   | OTTON"), is, and at all times mentioned was, an      |  |
| 20 | individual residing within the County of San Diego, State of California.                              |  |  |
| 21 | 3. The real estate purchase and sale agre   | ement entered into between Plaintiff GERACI and      |  |
| 22 | Defendant COTTON that is the subject of this action was entered into in San Diego County, California, |  |  |
| 23 | and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County,        |  |  |
| 24 | California (the "PROPERTY").  |  |  |
| 25 | 4. Currently, and at all times since approximately 1998, Defendant COTTON owned the                   |  |  |
| 26 | PROPERTY.   |  |  |
| 27 | 5. Plaintiff GERACI does not know the   | e true names or capacities of the defendants sued    |  |
| 28 | herein as DOES 1 through 20 and therefore sue suc   | h defendants by their fictitious names. Plaintiff is |  |
|    | 1   | 756  |  |
|    | PLAINTIFF' S COMPLAINT  |  |  |

informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
 same are ascertained.

6. Plaintiff alleges on information and belief that at all times mentioned herein, each and every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged, were acting, whether individually or through their duly authorized agents and/or representatives, within the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge, permission, and consent of the remaining defendants, and each of them, and that said defendants ratified and approved the acts of all of the other defendants.

### **GENERAL ALLEGATIONS**

7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license, known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and conditions of the written agreement.

9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long, time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

2

the PROPERTY to him by Defendant COTTON.

### **FIRST CAUSE OF ACTION**

#### (For Breach of Contract against Defendant COTTON and DOES 1-5)

10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 9 above.

11. Defendant COTTON has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, COTTON has stated that, contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest. COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP application.

12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

#### **SECOND CAUSE OF ACTION**

# (For Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant COTTON and DOES 1-5)

13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 12 above.

14. Each contract has implied in it a covenant of good faith and fair dealing that neither party will undertake actions that, even if not a material breach, will deprive the other of the benefits of the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

# PLAINTIFF' S COMPLAINT

withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON has breached the implied covenant of good faith and fair dealing.

15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

# **THIRD CAUSE OF ACTION**

# (For Specific Performance against Defendants COTTON and DOES 1-5)

16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 15 above.

17. The aforementioned written agreement for the sale of the PROPERTY is a valid and binding contract between Plaintiff GERACI and Defendant COTTON.

18. The aforementioned written agreement for the sale of the PROPERTY states the terms and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
18 writing that satisfies the statute of frauds.

20. The aforementioned written agreement for the purchase and sale of the PROPERTY is fair and equitable and is supported by adequate consideration.

21. Plaintiff GERACI has duly performed all of his obligations for which performance has been required to date under the agreement. GERACI is ready and willing to perform his remaining obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

# PLAINTIFF' S COMPLAINT

Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that 1 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for 2 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase 3 4 price.

Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions 23. that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary and to specifically perform the contract upon satisfaction of the condition that such approval is in fact obtained.

Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's 24. attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not 10 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon 12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana dispensary and tender the remaining balance of the purchase price.

25. The aforementioned written agreement for the purchase and sale of the PROPERTY constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy, and adequate legal remedy is presumed.

26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon specifically enforcing the written agreement for the purchase and sale of the PROPERTY from Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20

5

6

7

8

9

11

13

14

15

16

17

18

19

21

22

23

# FOURTH CAUSE OF ACTION

### (For Declaratory Relief against Defendants COTTON and DOES 1-5)

27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the 25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written 26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the 27 written agreement. GERACI disputes those conflicting or additional contract terms.

28

5

29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or his assignee. Such a declaration is necessary and appropriate at this time so that each party may ascertain their rights, duties, and obligations thereunder.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

# On the First and Second Causes of Action:

1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at trial.

# On the Third Cause of Action:

2. For specific performance of the written agreement for the purchase and sale of the PROPERTY according to its terms and conditions; and

3. If specific performance cannot be granted, then damages in an amount in excess of \$300,000.00 according to proof at trial.

# On the Fourth Cause of Action:

4. For declaratory relief in the form of a judicial determination of the terms and conditions of the written agreement and the duties, rights and obligations of each party under the written agreement.

# **On all Causes of Action:**

For costs of suit incurred herein; and

5. For temporary and permanent injunctive relief as follows: that Defendants, and each of them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and all persons acting in concert with or participating with them, directly or indirectly, be enjoined and restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

6.

27 ||///

28 ||///

| 7. For such other an  | d further relief as the Court may deem just and proper. |   |
|-----------------------|---|---|
|                       |   |   |
| Dated: March 21, 2017 | FERRIS & BRITTON,<br>A Professional Corporation         |   |
|                       |   |   |
|                       | BV: Michael R. Ukenstein                                |   |
|                       | Michael R. Weinstein                                    |   |
|                       |   |   |
|                       | LARRÝ GERACI  |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       |   |   |
|                       | 7   | 762   |
|                       |   | Dated: March 21, 2017<br>FERRIS & BRITTON,<br>A Professional Corporation<br>By: <u>Machael R. Weinstein</u><br>Soft H. Toothaere<br>Atomeys for Plaintiff<br>LARRY GERACI |

# EXHIBIT A

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larty Geraci

Cotton

| ACKNOWLEDGMENT   |  |  |
|--|--|--|
| A notary public or other officer completing this<br>certificate verifies only the identity of the individual<br>who signed the document to which this certificate is<br>attached, and not the truthfulness, accuracy, or<br>validity of that document.   |  |  |
| State of California<br>County of <u>San Diezu</u> )  |  |  |
| On November 2, 2010 before me, Jessica Newell Notary Audi<br>(insert name and title of the officer)  |  |  |
| personally appeared $\underline{Dav/v}$ Cottom and $\underline{Lav/v}$ Guyan', who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. |  |  |
| I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.   |  |  |
| UTNESS my hand and official seal.<br>WITNESS my hand and official seal.<br>San Diego County<br>My Comm. Expires Jan 27, 2017   |  |  |
| Signature for Null (Seal)  |  |  |

.

# **EXHIBIT 3**



# How to APPLY FOR A CONDITIONAL USE PERMIT Marijuana Outlet

City of San Diego Development Services Department 1222 First Avenue, MS 301, San Diego, CA 92101-4101

October 2017

INFORMATION BULLETIN

170

This Information Bulletin describes the application process for a Marijuana Outlet (formerly Medical Marijuana Consumer Cooperative) Conditional Use Permit.

### I. MARIJUANA OUTLETS

All Marijuana Outlets (MO) are regulated by SDMC, Section 141.0504 and Chapter 4, Article 2, Division 15. This information bulletin provides general information, regulations and minimum submittal requirements to apply for a Process 3 Conditional Use Permit (CUP) for a MO. For general information, please see https://www.sandiego.gov/development-services.

### II. MARIJUANA OUTLET RESTRICTIONS

- A. The total number of MOs is limited to four (4) per City Council District.
- **B.** MOs are not allowed within 1,000 feet of the following: resource and populationbased City parks; churches; child care centers; playgrounds; City libraries; minororiented facilities; other Marijuana Outlets; residential care facilities; or schools (as defined in SDMC Section 141.0504).
- **C.** MOs are not allowed within 100 feet of a residential zone.
- D. MOs are allowed only in the following zones: IBT-1-1; IL-3-1; IS-1-1; CC-2-1; CC-2-2; CC-2-3; CC-2-4; CC-2-5; CR-2-1, CO-2-1; CO-2-2; and within the following Planned Districts (PDO): Barrio Logan (Subdistrict D), Carmel Valley (EC & SP), Centre City (WM, I, T & CC), Mission Valley (CO, CV & CR without residential), and San Ysidro within the Coastal Overlay Zone (Commercial Zones 1, 2 & 3 and I-1 Industrial Zones) until such time the PDO is repealed.

#### Documents referenced in this Information Bulletin

- San Diego Municipal Code (SDMC) <u>Section</u> <u>141.0504</u>
- San Diego Municipal Code (SDMC) (Chapter 4, Article 2, Division 15)
- Project Submittal Manual, Section 4
- Information Bulletin 503, Fee/Deposit Schedule For Development & Policy Approvals/Permits
- <u>Information Bulletin 512</u>, How to Obtain Public Noticing Information
- Information Bulletin 580, Potential Historical Resource Review
- Affidavit for Marijuana Outlet/Marijuana Production Facilities for Conditional Use Permit (CUP), <u>DS-190</u>
- Ownership Disclosure Statement, <u>DS-318</u>
- Storm Water Requirements Applicability Checklist, <u>DS-560</u>
- <u>Climate Action Plan Consistency Checklist</u>
- General Application, <u>DS-3032</u>
- Deposit Account/Financially Responsible Party, <u>DS-3242</u>
- List of Approved MO Sites

### III. OPTIONS FOR SERVICE

MO CUP applications may be submitted by appointment by calling 619-446-5300 or as a Walk-In Service at 1222 1st Avenue, 3rd floor, Check-In Counter.

# IV. SUBMITTAL REQUIREMENTS

MO The Development Services Department will not accept, formally review, nor deem complete any MO CUP applications unless the application package satisfies all of the minimum project submittal City's requirements for Conditional Use Permits (see Project Submittal Manual, Section 4) and this Information Bulletin (Section IV, Step A). The Submittal Matrix and the Minimum Submittal Requirements Checklist identify the forms, documents, and plans that are required. The Submittal Matrix is an easy-touse tool to help you quickly identify the type of items needed for submittal. The Submittal Requirements Checklist provides а

City of San Diego · Information Bulletin 170

October 2017

| description of the requirement and content |  |  |
|--|--|--|
| of each form, document, and plan details   |  |  |
| needed. The checklist also provides the    |  |  |
| applicant with information references      |  |  |
| regarding the required fees and deposits.  |  |  |

All MO CUP applications will go through a three step completeness review process to ensure that all of the required information is provided to review the project.

#### A. Step One: Initial Screening

Page 2

One copy of all items noted in the checklist below must be provided during this first initial screening step:

- 1. General Application (DS-3032).
- **2.** Deposit Account/Financially Responsible Party Form (DS-3032).
- 3. Ownership Disclosure Statement (DS-318).
- **4.** Proof of Ownership/Legal Lot Status (Grant Deed).
- **5.** Storm Water Requirements Checklist (DS-560).
- 6. Photographic Survey photo and CD-R.
- **7.** Site plan with development summary.
- 8. Floor plan.
- **9.** Elevations if proposing exterior modifications.
- **10.** Historic Resources Information (See Information Bulletin 580) if exterior alterations are proposed on a structure 45 years or older.
- **11.** Fees (see Information Bulletin 503 & Section V of this bulletin).
- **12.** Climate Action Plan (CAP) Consistency Checklist.
- **13.** In addition to the submittal requirements for CUP, the following information is required:

- a. 1000-foot Radius Map.
  - i. Provide a one page Assessor's parcel map outlining a 1000-foot radius around the subject property. Include a spreadsheet identifying the use, address, assessor parcel number, and business name for all properties within the 1,000 foot radius.
  - ii. The map must also identify residential zones within 100 feet of the property.
- b. Affidavit for MO/MPF for Conditional Use Permit (CUP) (DS-190).

Please note that if all required forms above are not completely filled out and/or signed, the application will be rejected. Once staff has determined that the submittal application contains all of the required information listed above, your application will then go to Step Two, known as Submitted Completeness Review.

#### B. Step Two: Submitted Completeness Review

If your project application meets the minimum requirements described in Step One above, your project will then go through the Step Two comprehensive review called Submitted Completeness Review. Submitted Completeness Review can take up to 30 (calendar) days to complete. The Public Notice Package will not be required as part of the Submitted Completeness Review, but will be collected at the time of Full Submittal. Upon completion of the Submitted Completeness Review, staff will notify the applicant via email or by postal mail whether the application is ready to be fully submitted or if additional information/clarification is required.

### C. Step Three: Full Submittal

When the project is ready for a Full Submittal, staff will provide the applicant with the number of document sets required, including the request for the Public Notice Package. Once staff accepts

Printed on recycled paper. Visit our web site at <u>www.sandiego.gov/development-services</u>. Upon request, this information is available in alternative formats for persons with disabilities.

| Page 3   | City of San Diego · Information Bulletin 170   | October 2017 |
|--|--|--------------|
|  | the Full Submittal, the project will then be<br>assigned to a project manager and routed<br>to the required reviewers. Once four (4)<br>projects per each council district have<br>obtained final approval from the City's<br>decision-maker, no more applications can<br>be approved.   |              |
| Ti<br>ti<br>Ir   | <b>EPOSIT/FEES</b><br>ne deposit and fees must be paid at the<br>me of Step One: Initial Screening (see<br>formation Bulletin 503 "Fee Schedule for<br>evelopment & Policy Approvals/Permits").  |              |
| N<br>D<br>D<br>A<br>P<br>C<br>N<br>fii<br>D<br>A<br>fo | UBLIC SAFETY PERMIT<br>NOS must obtain a MO/MPF Permit (Form<br>S-191) from the Development Services<br>epartment pursuant to Chapter 4, Article 2,<br>ivision 15 of the San Diego Municipal Code.<br>pplications for a MO/MPF Permit will be<br>rocessed after the approval of the<br>onditional Use Permit. Subsequent annual<br>IO/MPF Permit renewals or any updated<br>ngerprinting and background checks can be<br>rocessed by the Development Services<br>epartment with the submittal of a General<br>pplication Form DS-3032 and fee payment<br>or Single Discipline Preliminary Review (see<br>iformation Bulletin 513). |              |

# **EXHIBIT 4**

| San Diego, CA<br>Ter City or San Diego<br>(619) 446-5000   |  | Ownershi   | p Disclosure<br>Statement  |
|--|--|--|--|
| Approval Type: Check appropriate box<br>Neighborhood Development Permit<br>Variance Tentative Map Ve   | x for type of approval (s) request<br>t  Site Development Permit<br>esting Tentative Map  Map Wa   | ed: Neighborhood Use Permit Coasta<br>Planned Development Permit X Condit<br>aiver Land Use Plan Amendment • Oth   | I Development Permit<br>ional Use Permit<br>ier  |
| Project Title  |  | Projec   | t No. For City Use Only  |
| Federal Blvd. MMCC   |  |  |  |
| Project Address:   |  |  |  |
| 6176 Federal Blvd., San Diego,   | CA 92114   |  |  |
| art I - To be completed when pro   | anady is hald by individual  |  |  |
|  |  | ine that an application for a permit, map or othe  | www.upattor.ng.klantified  |
| Idividuals who own the property). A sig-<br>com the Assistant Executive Director of<br>levelopment Agreement (DDA) has be<br>danager of any changes in ownership of<br>he Project Manager at least thirty day<br>information could result in a delay in the<br>Additional pages attached | <u>anature is required of at least or</u><br>f the San Diego Redevelopment<br>een approved / executed by the<br>during the time the application is<br>a prior to any public hearing on | the type of property interest (e.g., tenants who was a constructed of the property owners. Attach additional progency shall be required for all project parcels. City Council. Note: The applicant is response being processed or considered. Changes in the subject property. Failure to provide account of the subject property. | ages if needed. A signature<br>for which a Disposition and<br>ible for notifying the Project<br>ownership are to be given to |
| Name of Individual (lype or print):<br>Darryl Cotton   |  | Name of Individual (type or print):<br>Rebecca Berry   |  |
| X Owner Tenant/Lessee  | Redevelopment Agency   | Owner X Tenant/Lessee  | Redevelopment Agency   |
| Street Address:  |  | Street Address:<br>5982 Gullstrand St  |  |
| 6176 Federal Blvd<br>City/State/Zip:   |  | City/State/Zip:  |  |
| San Diego Ca 92114   |  | San Diego / Ca / 92122   |  |
| Phone No:<br>( 619 /)954-4447  | Fax No   | Phone No:<br>8589996882  | Fax No:  |
| Signature: 1/  | Date:  | Signalure :  | Date:  |
|  | 10-31-2016   | Marenon a king   | 10-31-2016   |
| 17th   |  | Name of Individual (type or print):  |  |
| 1AM  |  |  |  |
| Name of Individual (type or print):  | Redevelopment Agency   | Owner   TenanVLessee   Re  | edevelopment Agency  |
| Name of Individual (type or print):  | Redevelopment Agency   | Cowner CrenanVLessee CRe<br>Street Address:  | development Agency   |
| Name of Individual (type or print):  | Redevelopment Agency   | Street Address:<br>City/State/Zlp.   | development Agency   |
| Name of Individual (type or print):<br>Owner TenanVLessee T<br>Street Address:   | Redevalopment Agency<br>Fax No.  | Street Address:  | edevelopment Agency<br>Fax No:   |
| Name of Individual (type or print):<br>Cowner TenanVLessee Street Address:<br>City/State/Zip:  |  | Street Address:<br>City/State/Zlp.   |  |
| Name of Individual (type or print):<br>Owner TenanVLessee Street Address:<br>City/State/Zip:<br>Phone No:  | Fax No.  | Street Address:<br>City/State/Zlp.<br>Phone No   | Fax No:  |
| Name of Individual (type or print):<br>Owner TenanVLessee Street Address:<br>City/State/Zip:<br>Phone No:  | Fax No.  | Street Address:<br>City/State/Zlp.<br>Phone No   | Fax No:  |

Printed on recycled paper. Visit our web site at www.sandlego.gov/devolopmont-pervices Upon request, this information is available in alternative formats for persons with disabilities. DS-318 (5-05)

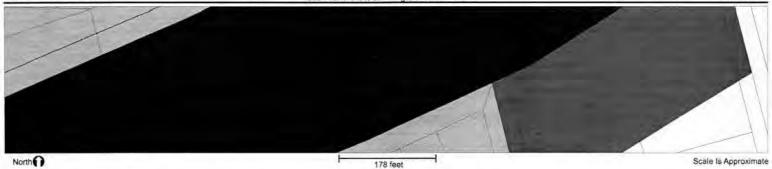
# **EXHIBIT 5**

## **Parcel Information Report**

Report Number 101

THE CITY OF SAN DIEGO Development Services Department 1222 First Avenue, San Diego, CA 92101-4154

Page 1 of 3



## Map Layers Included In Report

| Description                                       | Visible | Transparent   | Has Intersecting Features |
|---|---------|---|---------------------------|
| Roads   | 1       |   | No                        |
| Freeways  | 1       |   | No                        |
| Parcels   | 1       | <ul> <li>Image: A start of the start of</li></ul> | Yes                       |
| Lots  |         |   | No                        |
| Base Zones ("Official Zoning Map")                | 1       |   | Yes                       |
| Community Plan                                    |         |   | Yes                       |
| Clairemont Mesa Height Limitation Overlay Zone    |         |   | No                        |
| Coastal Height Limitation Overlay Zone            |         |   | No                        |
| Coastal Overlay Zone (Permit Jurisdictions)       |         |   | No                        |
| Earthquake Fault Buffers                          |         |   | No                        |
| Elevation Contours (5 foot; 1999)                 |         |   | Yes                       |
| MSCP Vegetation                                   |         |   | Yes                       |
| Multiple Habitat Planning Area                    |         |   | No                        |
| Non-Coastal Wetlands                              |         |   | No                        |
| Sensitive Coastal Overlay Zone                    |         |   | No                        |
| Sensitive Vegetation                              |         |   | No                        |
| Slopes 25% or greater (1999)                      |         |   | No                        |
| Vernal Pools                                      |         |   | No                        |
| Airport Land Use Compatibility Overlay Zone       |         |   | No                        |
| Airports: ALUCP Noise Contours (CNEL)             |         |   | No                        |
| Airports: Airport Approach Overlay Zone (SDIA)    |         |   | No                        |
| Airports: Airport Influence Areas                 |         |   | No                        |
| Airports: FAA Part 77 Noticing Area               |         |   | No                        |
| Airports: Old SDIA Airport Influence Areas        |         |   | No                        |
| Airports: Old SDIA Noise Contours (CNEL)          |         |   | No                        |
| Airports: Old SDIA Safety Zones (RPZ)             |         |   | No                        |
| Airports: Safety Zones                            |         |   | No                        |
| Community Plan Implementation Overlay Zone        |         |   | No                        |
| FEMA Floodways & Floodplains                      |         |   | Yes                       |
| Facilities Benefit Assessment                     |         |   | No                        |
| Fire: Brush Management                            |         |   | No                        |
| Fire: Brush Zones with 300 Foot Buffer            |         |   | Yes                       |
| Fire: Very High Fire Hazard Severity Zones        | Π       |   | Yes                       |
| First Public Roadway                              |         |   | No                        |
| Historic Districts: Existing                      |         |   | No                        |
| Historic Districts: Potential                     |         |   | No                        |
| Historic Resources: Designated (points)           |         |   | No                        |
| Historic Resources: Potential, Greater North Park |         |   | No                        |

Every reasonable effort has been made to assure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

THIS MAP IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

PROPRIETARY INFORMATION: The use of this information is pursuant to sublicense agreement only. Any resale or relicensing of this information is prohibited, except in accordance with such sublicensing agreements.

773

P2K 02.03.38

## **Parcel Information Report**

## Report Number 101

#### THE CITY OF SAN DIEGO Development Services Department 1222 First Avenue, San Diego, CA 92101-4154

3/20/2018 09:29:03

Page 2 of 3

Map Layers Included In Report

| Description                             | Visible | Transparent | Has Intersecting Features |
|---|---------|-------------|---------------------------|
| Port District Dedicated Streets         |         |             | No                        |
| Port District Granted & Conveyed Lands  |         |             | No                        |
| Prime Industrial Lands                  |         |             | No                        |
| Promise Zone                            |         |             | No                        |
| Redevelopment Districts                 |         |             | No                        |
| Urban Vilage Overlay Zone               |         |             | No                        |
| Geologic Hazards                        |         |             | Yes                       |
| Parking Impact Overlay Zone             |         |             | No                        |
| Residential Tandem Parking Overlay Zone |         |             | No                        |
| Transit Area Overlay Zone               |         |             | No                        |
| Transit Priority Areas                  |         |             | No                        |

## **Intersecting Features**

| APN         | Recordation                   | Owner Information |          | Valuation      | Other      |
|-------------|-------------------------------|-------------------|----------|----------------|------------|
| 543-020-020 | Record: 102763 Date:2/27/1998 | COTTON DARRYL     |          | Land: \$133,2  | 4 Units: 0 |
|             | Legal:                        | 6184 FEDERAL BLVD |          | Imp: \$60,69   | 8 Taxable: |
| Address(es) | BLK 25 LOT 20 PER MAP 2121    | SAN DIEGO         | CA 92114 | Total: \$193,9 | 2 Own Occ: |

| Base Zones | ")               |                     |
|------------|------------------|---------------------|
| Zonename   | Ordinance Number | Implementation Date |
| CO-2-1     | 0-20580 NS       | 01/14/2016          |

| Community Plan             | 1.1  |
|----------------------------|------|
| Community Plan Name        | Code |
| ENCANTO NEIGHBORHOODS, SOU | 11   |

| <b>Elevation Contours</b> | (5 foot; 1999) |
|---------------------------|----------------|
|                           | Elevation      |
|                           | 275            |

| MSCP Vegetation |   |
|-----------------|---|
| Feature Name    | Feature Detail  |
| Urban Developed | Holland 95 Code: 12000 / Holland 90 Code: 12000 / Category: NON-NATIVE VEGETATION |

| FEMA Floodways Floodplains |   |
|----------------------------|---|
| Feature Name               | Feature Detail  |
| Flood Designation: FP500   | Flood Zone: 0.2 PCT ANNUAL CHANCE FLOOD HAZARD / Special Flood Hazard Area? NO / Floodway? NO |

## **Parcel Information Report**

Report Number 101

THE CITY OF SAN DIEGO Development Services Department 1222 First Avenue, San Diego, CA 92101-4154 3/20/2018 09:29:03

Page 3 of 3

| Feature Detail |
|----------------|
|                |
|                |

| Fire: Very High Fire Hazard Severity Zones |                |
|--|----------------|
| Feature Name                               | Feature Detail |
| Very High Fire Hazard Severity Zone        |                |

自己

ł

| Geolog | ic Hazards  |  |
|--------|---|--|
| Code   | Hazard  |  |
| 32     | Liquifaction; Low Potential - fluctuating groundwater minor drainages |  |

# **EXHIBIT 6**

| Darryl Cotton<br>6176 Federal Avenue   | F Lass of the Superior Doub  |
|--|--|
| San Diego, CA 92114  | JAN 2 2 2618   |
| 619-266-4004 (phone)<br>619-229-9387 (fax)   | By A SEAMONS, Deputy   |
| PRO PER  |  |
| SUPERIOR   | COURT OF CALIFORNIA  |
|  | N DIEGO – CENTRAL DIVISION   |
|  |  |
| LARRY GERACI, an individual,   | ) Case Nos.:   |
| Plaintiff,   | ) 37-2017-00010073-CU-BC-CTL<br>) 37-2017-00037675-CU-WM-CTL   |
| y.   | )<br>) VERIFIED MEMORANDUM OF  |
| DARRYL COTTON, an individual, and DOES 1-10, inclusive,                                  | <ul> <li>POINTS AND AUTHORITIES IN</li> <li>SUPPORT OF DARRYL COTTON'S</li> <li>RESPONSE TO</li> </ul>                         |
| Defendant  | (1) MOTION BY DI AINTIEE/CDOSS   |
| AND RELATED CROSS-ACTION   | CROSS-DEFENDANT REBECCA<br>BERRY TO COMPEL THE   |
| DARRYL COTTON, an individual,  | DEPOSITION OF DARRYL COTTON<br>AND (2) MOTION BY REAL PARTIES<br>IN INTEREST, LARRY GERACI AND<br>REBECCA BERRY, TO COMPEL THE |
| Petitioner/Plaintiff,  | ) DEPOSITION OF DARRYL COTTON  |
| V.   | )<br>Date: January 25, 2018  |
| CITY OF SAN DIEGO, a public entity;<br>and DOES 1 through 25,                            | Time: 8:30 a.m.<br>Judge: Hon. Joel R. Wohlfeil  |
| Respondents/Defendan   | Dont : C 72  |
| REBECCA BERRY, and individual;<br>LARRY GERACI, an individual, and<br>ROES 1 through 25, |  |
| Real Parties In Interest.  |  |
| I. L.  | EGAL INTRODUCTION  |
| I, Darryl Cotton (Cotton or Petiti   | ioner), Defendant and Cross-Complainant in the matter  |
| against Larry Geraci (Geraci or Respond  | dent) and Rebecca Berry (Berry) and Petitioner/Plainti   |

in the matter against the City of San Diego (City), submit these points and authorities in opposition to the two motions before this Court seeking to compel my deposition (Motions to Compel). As fully argued below, the <u>technical</u> basis of my opposition is that, as a result of the professional negligence of my then-counsel and the facts of this case, when this Court made a factual finding that I am unlikely to prevail on my cause of action for breach of contract and denied my Application for a Temporary Restraining Order (TRO Motion) on December 7, 2017, it "abused its discretion."

Consequently, pursuant to CCP §§ 904.1(a)(6), 923 and the *Emeryville* line of cases, a
Writ of Supersedeas and Writ of Mandate is warranted and the Motions to Compel should be
denied while my appeals are reviewed by the Court of Appeals (COA).<sup>1</sup> I respectfully submit
that the <u>only</u> issue that this Court needs to fully understand to decide these Motions to Compel is
whether this Court would have made a different factual finding regarding my likelihood of
success on the merits of my cause of action for breach of contract had my then-counsel not been
negligent at the oral hearing and raised with this Court a single 1-page email.

### II. PLAIN LANGUAGE INTRODUCTION AND RESPECTFUL REQUEST

The <u>real</u> reason I will be before this Court on January 25, 2018, once summarized in this introduction, will make me sound like I am paranoid, suffer from delusions of being the target of numerous conspiracies and will almost assuredly make me lose all credibility with this Court at the very onset. "From Oswald to Elvis, from Ollie to O.J., allegations of conspiracy have become the stuff of tabloid journalism and have the ring of a slug coin. The history of conspiracy, it has been observed, evidences the 'tendency of a principle to expand itself to the limit of its logic.' [Krulewitch v. United States, 336 U.S. 440, 445 (1949) (quoting Benjamin N. Cardozo, The

24

1

2

3

4

5

6

7

15

25
<sup>1</sup> See E. Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E ("Stay" to preserve status quo following denial of TRO or injunction: Where a temporary restraining order or injunction has been denied and the defendant threatens to perform the act in question, a stay of the trial court order obviously will not "preserve the status quo." Here, the appellate court has authority to issue a "stay" (as distinguished from supersedeas) enjoining defendant from doing the action in question pending the appeal. [CCP § 923—court of appeal may "make any order appropriate to preserve the status quo" during pendency of an appeal; *People ex rel. San Francisco Bay Conservation & Develop, Comm'n v. Town of Emeryville*, supra, 69 C2d at 536-539, 72 CR at 792-794].).

Nature of the Judicial Process 51 (1925)).]"2

2 Your Honor, for the first time in my life I understand the concept of cognitive 3 dissonance. I believe myself to be a man of reason and logic. Although I am not an attorney, I 4 can understand the application of laws and principal to facts to analyze a situation and determine 5 whether a cause of action is met. I firmly and completely believe that based on the facts of my 6 case, the law and my reasoning below, that it is very simple and clear that this case brought by Geraci was done in bad-faith in an attempt to acquire my property, the main subject matter of this litigation, through a vexatious lawsuit. Further, that once this Court confirms my allegations of actions taken by counsel during the course of this litigation, that this Court will be absolutely appalled that our judicial system has been used so blatantly and disrespectfully as an instrument of misjustice.

12 However, despite believing in what I stated in the preceding paragraph 100%, I have been 13 before Judge Sturgeon and this Court on [seven] occasions and not only has there been no 14 outrage, with the exception of one motion, all of my motions have been denied and this Court 15 even made a factual finding that I am unlikely to prevail on the merits of my case. Clearly, I am 16 missing something. I am left to conclude that the reason for this paradox is probably one of two 17 causes.

18 First, what I believe and hope to be the case, the negligent and/or potentially fraudulent 19 actions by counsel in this action have prevented Judge Sturgeon and this Court from properly 20 focusing on the substantive facts of this case and providing me appropriate lawful relief. Further, 21 due to intense stress and my own lack of ability to properly articulate myself before this Court, I 22 have not been able to communicate clearly and reasonably to this Court when I personally have 23 been before it. I realize that this imposes a burden and makes it more difficult for this Court "to 24 get quickly to the crux of a matter and to craft creative problem-solving orders for [pro se] 25 litigants."3

26

1

7

8

9

10

11

-3-

<sup>&</sup>lt;sup>2</sup> Governmental Conspiracies to Violate Civil Rights: A Theory Reconsidered. Michael Finch. Montana Law 27 Review Volume 57. Issue 1 Winter 1996. Page 1. <sup>3</sup> See Handling Cases Involving Self-Represented Litigants. Administrative Office of the Courts. January 2007. 28

Page xi. ("[S]elf-represented litigants often have difficulty preparing complete pleadings, meeting procedural

It is for this reason that, although I believe Mr. Weinstein filed the instant Motions to Compel as a vexatious litigation tactic, I am grateful that he did. It gives me a lawful and procedurally appropriate forum to fully explain the <u>substantive</u> issues to this Court and not have Mr. Weinstein be able to have this response stricken or denied on some procedural grounds that elevate form over justice.

As noted above, I am applying for a Writ of Supersedeas: "The issuance of a writ of supersedeas is not based on any statute, code section, or rule of court, but is within the inherent power of the court. Whether or not a writ should issue depends '*upon the special circumstances of each case*' (*West Coast etc. Co. v. Contractors' etc. Board, 68 Cal.App.2d* 1, 6 [155 P.2d 863])." (*internal citations omitted.*)<sup>4</sup> Additionally, pursuant to my appeal for a Writ of Mandate, relevantly and as summarized in the Rutter Guide:

"Mandate will issue only if the following requirements are met:

[1] No adequate remedy and irreparable injury...

1

2

3

4

5

6

12

13

14

15

16

17

18

19

20

21

25

However, notwithstanding an adequate remedy by appeal, a petition for writ of mandate may be granted in <u>exceptional circumstances</u>—e.g., where the issue presented is of great public importance requiring prompt resolution and/or constitutional rights are implicated. [See, e.g., Anderson v. Super.Ct. (1989) 213 CA3d 1321, 1328, 262 CR 405, 410; Silva v. Super.Ct. (Heerhartz) (1993) 14 CA4th 562, 573, 17 CR2d 577, 583; and ¶ 15:6.1 ff.]

[2] ... Additionally, the petitioner must demonstrate an abuse of discretion or respondent's failure to perform a nondiscretionary duty to act."<sup>5</sup>

It is the "special/exceptional circumstances" arising from the acts of counsel in this

matter, affecting the judiciary, deceiving this Court and the perception of access to justice by the public in our judicial system that makes what was originally a very simple contractual dispute a

case "of great public importance requiring prompt resolution..."<sup>6</sup>

Thus, assuming I am not crazy, I believe that if the irreparable harm that I am facing is

26 requirements, and articulating their cases clearly to the judicial officer. These difficulties produce obvious challenges.")

27 4 Sun-Maid Raisin Growers of Cal. v. Paul (1964) 229 Cal.App.2d 368, 374-375 [40 Cal.Rptr. 352]

28 <sup>5</sup> B.Common Law Writs, Cal. Prac. Guide Civ. App. & Writs Ch. 15-B (emphasis added.) <sup>6</sup> Id.

allowed to pass, then as stated by the Supreme Court of California, public confidence in the 2 judiciary will be eroded and this case "will reinforce an already too common perception that the 3 quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal." Neary v. Regents of Univ. of California, 3 Cal. 4th 273, 287, 834 P.2d 119, 127-28 (1992).

1

4

5

6

24

However, there is the second possibility, which is that I am simply not reasoning well and 7 have had some form of mental or psychological impairment. And I am actually before this Court 8 wasting this Court's precious judicial time and resources. This is, I am forced to conclude, a 9 possibility, because December 12, 2017, when this Court denied my Motion for Reconsideration, 10 was the worst day of my life. As explained below, I was 100% positive that when I appeared 11 before this Court on that day, I would be able to explain my then-counsel's negligence at the 12 December 7, 2017 TRO Motion hearing, this Court would change its position and issue the TRO. 13 Instead, my Motion for Reconsideration was denied and, given my expectations of having "my 14 day in court," I was in so much shock that I suffered a mini-stroke, a TIA, and had to go to the 15 Emergency Room (see Exhibit 1; medical records from admission to Mercy Scripps Hospital). 16 The next day, when my financial investor told me, as a result of the denial of my 17 Reconsideration Motion, that he was going to cease funding my business and this litigation 18 because he needed to "cut his losses," I went to his location uninvited and physically assaulted 19 him. (See Exhibit 2 - Supporting declaration of Joe Hurtado.) He was going to call the police 20 and have me arrested. I will forever be grateful that he did not and instead called a medical 21 doctor who found me to be a danger to myself and others (See Exhibit 3; Declaration of Dr. 22 Carolyn Candido stating that I was a danger to myself and others and was suffering from Acute 23 Stress Disorder).

In light of the above, I am open to the fact that I am not thinking clearly and would like to 25 respectfully request that this Court, when determining whether to grant or deny the Motions to 26 Compel, that it please provide a written opinion regarding my allegations of facts, law and 27 reasoning below that make up the "special/exceptional circumstances" of my case and which are 28

1 the basis of my appeal. To be completely clear, I fully recognize that, especially if I am simply 2 delusional, this Court has no obligation to me whatsoever to provide any reasoning.<sup>7</sup> But I ask 3 the Court to please believe me when I say that I am incapable of expressing in written words here 4 the everyday anguish I face thinking that I am losing everything of value in my life, that I am 5 letting down my family, friends and business partners of over 20 years, and that I will soon be 6 destitute due to Geraci's vexatious lawsuit and the negligent actions of counsel who failed to live 7 up to their ethical obligations. I fear if I am not thinking clearly and there are legal, valid, and 8 substantive reasons for the things that have happened, I may not be able to fully understand the 9 legal concepts that justify such actions (however personally I disagree with them). A written 10 opinion that I can slowly review and research the legal language and concepts of, analyzing my 11 arguments below, would truly and sincerely be appreciated. It would, as perverse as it sounds, be 12 a source of great solace to me. Understanding that Geraci's lawsuit against me has some 13 modicum of merit would be a great relief to me and would take away what is the unfounded 14 every day, relentless and intense rage I have against Geraci and counsel in this case and the 15 despair that I feel at being unable to access justice because I cannot, with my limited time and 16 resources, navigate the complexities of what is supposed to also be my judicial system. 17 **III. MATERIAL FACTUAL BACKGROUND** 18 A. Summary of Sole Underlying and Case Dispositive Issue in this Matter (the "Real Issue") 19 In November of 2016, Petitioner and Respondent met and came to an oral agreement for 20 the sale of Petitioner's Property to Respondent (the "November Agreement"). Materially, at the 21 22 <sup>7</sup> See <u>Nakamura v. Parker</u> (2007) 156 Cal.App.4th 327, 335-336 [67 Cal.Rptr.3d 286, 290] ("Where, as here, a trial court is not explicitly required by law to state reasons for the decision rendered, the integrity of adjudication does 23 not necessarily require an explanation; but that certainly does not mean a court should decline to provide any reasons for a ruling. "By and large it seems clear that the fairness and effectiveness of adjudication are \*336 24 promoted by reasoned opinions. Without such opinions the parties have to take it on faith that their participation in the decision has been real, that the arbiter has in fact understood and taken into account their proofs and arguments. 25 A less obvious point is that, where a decision enters into some continuing relationship, if no reasons are given the parties almost inevitably guess at reasons and act accordingly. Here the effectiveness of adjudication is impaired, not 26 only because the results achieved may not be those intended by the arbiter, but also because his freedom of decision in future cases may be curtailed by the growth of practices based on a misinterpretation of decisions previously 27 rendered." (Fuller, The Forms and Limits of Adjudication (1978) 92 Harv. L.Rev. 353, 388.)".) 28 -6-DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL

meeting at which the parties reached the November Agreement, Respondent (i) provided
Petitioner with \$10,000 in cash to be applied towards a total non-refundable deposit of \$50,000
and had Petitioner execute a document to record his receipt of the \$10,000 (the "Receipt") and
(ii) promised to have his attorney speedily draft and provide final, written purchase agreements
for the Property that memorialized all of the terms that made up the November Agreement (the
"Final Purchase Agreement").

7 On the same day the November Agreement was reached, Respondent emailed Petitioner a 8 scanned copy of the Receipt. Petitioner, recognizing the Receipt could be construed as the final 9 purchase agreement for the Property, emailed back asking Respondent to specifically confirm the 10 Receipt was not the final purchase agreement as it failed to incorporate material terms. 11 Respondent replied, acknowledging Petitioner's request for his confirmation and specifically 12 providing said confirmation that the Receipt was not the Final Purchase Agreement (the 13 "Confirmation Email"). (See Exhibit 4 (contains all 14 emails between Geraci and myself. There 14 are no other written documents or communications between myself and Geraci other than text 15 messages.)

Thereafter, Respondent breached the November Agreement by, *inter alia*, failing to
provide (i) the balance of the non-refundable deposit and (ii) the Final Purchase Agreement.
Consequently, almost five months later in March of 2017, Petitioner terminated the November
Agreement with Respondent for breach. After terminating the November Agreement with
Respondent, Petitioner entered into a written real estate purchase agreement with a third-party
for the sale of the Property (the "Real Estate Purchase Agreement"). (Exhibit 5; the Third-Party
Purchase Agreement.)

After Petitioner terminated the November Agreement, Respondent filed the underlying
lawsuit seeking to stymie the Real Estate Purchase Agreement and to acquire the Property
through a vexatious lawsuit ("Respondent's Lawsuit"). Respondent's Lawsuit is premised solely
and exclusively on the allegation that the Receipt is the Final Purchase Agreement. Thus, putting
aside an overwhelming amount of additional and undisputed evidence, Respondent's own written

admission in the Confirmation Email stating the Receipt is not the Final Purchase Agreement is completely damning and dispositive. (See Exhibit 4.)

Respondent has never, (i) in the almost five months between his sending of the 4 Confirmation Email and the termination of the November Agreement or (ii) in any pleading or oral argument in the two underlying civil matters to date, challenged, disputed, denied or even acknowledged his own written admission in the Confirmation Email that the Receipt is not the Final Purchase Agreement - in complete contradiction of his own complaint. Furthermore, Respondent has neither produced nor even alleged the existence of a single piece of evidence to

9 support his contention that the Receipt is the Final Purchase Agreement. 10

Respondent's entire and sole superficial litigation strategy has been to rely on the Statute 11 of Frauds ("SOF") and the Parol Evidence Rule ("PER") to prevent the admission of his 12 Confirmation Email. However, the trial court denied Respondent's Demurrer based on the SOF 13 and the PER. Moreover, even if the trial court had held that the SOF and the PER did apply in 14 the first instance, the legal concept of promissory estoppel in California undeniably makes clear 15 that Respondent's reliance is misplaced. The seminal case of Monarco makes clear that 16 Respondent's actions in this case would be an unconscionable act and result in his unjust 17 enrichment. Thus, with no just basis for filing Respondent's Lawsuit, the only reasonable 18 conclusion that can be reached is that Respondent did so to unjustly acquire Petitioner's Property 19 through a vexatious lawsuit.

20 21

B.

1

2

3

5

6

7

8

Additional Material Background

Petitioner initially, given the simple nature of the Real Issue, believed that he would be 22 able to represent himself pro se against Respondent's Lawsuit. Petitioner prepared and filed an 23 Answer to Respondent's Lawsuit and a Cross-Complaint. Petitioner's Answer and Cross-24 Complaint were denied by the Court for failing to comply with procedural requirements. 25 Petitioner realized, notwithstanding the simplicity of the Real Issue, that he would be unable to 26 efficiently represent himself in a legal proceeding and entered into an agreement with a third-27 party to finance the litigation (the "Investor") against Respondent's Lawsuit in exchange for a 28

portion of the proceeds that he would receive from the Real Estate Purchase Agreement.

1

2

11

20

Investor did research, interviewed and hired a local law firm that had successfully 3 handled a similar matter for a landlord (the "Similar Lawsuit"). The Investor negotiated with Mr. 4 Demian for Mr. Demian to fully represent Petitioner and to provide his services on a financed 5 agreement of \$10,000 a month. The understanding was that the law firm would fully represent 6 Petitioner to have Respondent's Lawsuit adjudicated as quickly and efficiently as possible. Thus, 7 if in any given month the law firm billed more than \$10,000, the balance would be carried over 8 and made up for in future months in which there was less than \$10,000 a month billed or upon 9 conclusion of Petitioner's legal actions. (See Exhibit 6; email with Mr. Demian regarding 10 \$10,000 payment and retainer agreement with Mr. Demian.)

The reality was, the law firm did not want to actually do more than \$10,000 of work a 12 month. It heavily resisted doing the work necessary and preparing the Shortening Time and TRO 13 Motions. The end result was that Petitioner's counsel was ill-prepared for the hearings and, most 14 egregiously, completely failed to represent Petitioner's interest at the TRO Motion hearing. 15 Specifically, as fully detailed below, Petitioner's TRO motion argued that Petitioner would more 16 likely than not prevail on his Causes of Action for Breach of Contract and Declaratory Relief. 17 Petitioner's moving papers put forth three arguments in support of his likelihood to prevail on his 18 Breach of Contract claim and, essentially, one argument in support of his Declaratory Relief 19 claim.

Summarily, the three arguments in support of his Breach of Contract claim are that (i) the 21 undisputed communications between the parties, including the Confirmation Email, make clear 22 that the Receipt is not the Final Purchase Agreement as Respondent alleges, (ii) that the trial 23 court had already denied Respondent's attempt to utilize the SOF and the PER to prevent the 24 admission of the Confirmation Email when it denied Respondent's Demurrer and (iii) even if the 25 trial court were to have ruled otherwise or change its view, the concept of promissory estoppel 26 would clearly prevent the use of the SOF and the PER to effectuate an unconscionable fraud or 27 unjust enrichment, which would take place here if the Confirmation Email were prevented from 28

being legally taken notice of here as Respondent argues. The argument in support of the Declaratory Relief claim is based on a property owner's constitutional right to determine who may use his property as he sees fit – the exact same legal reasoning used by Petitioner's thencounsel to prevail in the previous Similar Lawsuit.

C. <u>The TRO Motion Hearing</u>

1

2

3

4

5

28

6 At the TRO Motion hearing, counsel for Respondent referenced the Receipt and said. 7 essentially, "your Honor, we have a valid contract for the property, end of story." At this point, 8 Petitioner's then-counsel should have, at the very least, raised the Confirmation Email and 9 explained to this Court that there was undisputed evidence that completely contradicted 10 Respondent's own argument and that the Receipt was the final purchase agreement for 11 Petitioner's property. He did not. Instead, he argued solely the constitutional grounds for 12 prevailing on the Declaratory Relief cause of action, which, unsurprisingly, did not persuade this 13 Court. Consequently, this Court made factual findings that I was unlikely to prevail on the merits 14 of my cause of action for breach of contract and that I was facing no irreparable harm.

15 The only relief sought by Petitioner via the TRO was that Respondent be enjoined from 16 withdrawing and/or sabotaging the CUP application pending on the property and that a Receiver 17 be appointed to oversee the CUP application pending resolution of Respondent's Lawsuit. 18 Petitioner, for valid reasons below, simply wanted to have Respondent enjoined from sabotaging 19 the CUP application pending resolution of Respondent's Lawsuit and the court addressing the 20 Real Issue. During the TRO Motion hearing, the trial court judge reviewed the proposed order 21 submitted by Petitioner and asked opposing counsel what was wrong with an agreement by 22 Respondent or an order enjoining such action, to which Respondent's counsel replied that there 23 was nothing specific, just the conceptual notion that his client should not be prevented from 24 being able to do as he wished. The court did not pursue this line of reasoning further.

In other words, the very action that Petitioner sought to prevent was *de facto* approved of
by the trial court. As explained below, withdrawing and/or sabotaging the CUP application is,
from Respondent's perspective, the best and only reasonable course of action to take in order to

-10-

mitigate his damages to Petitioner – assuming Petitioner is able to get to a point in the judicial system in which the Real Issue will be reviewed and adjudicated by the court. Thus, having the trial court specifically allow the very course of action that will irreparably harm Petitioner is maddening and a source of every day extreme psychological and emotional distress.

Immediately after the TRO hearing, Investor called and informed Petitioner about his
then-counsel's failure to raise the Confirmation Email or any of the other arguments in support
of his Breach of Contract claim. After speaking with Investor and his then-counsel, Petitioner
fired his then-counsel. Thereafter, Petitioner filed his Reconsideration Motion and the aftermath
of what happened after its denial is described above in the introduction.

10 11

1

2

3

4

## D. <u>Ethical Violations by Counsel</u>

After the denial of my Motion for Reconsideration, I made numerous calls to the State 12 Bar of California and calls to its Ethics Hotline regarding the actions of Mr. Demian. Based on 13 my descriptions of what took place at the TRO Motion hearing, I was directed to various ethics 14 opinions and judicial cases (set forth below), that support the position that Mr. Demian was, at 15 the very least, professionally negligent. Of note, it appears, all counsel present violated their 16 ethical duties that day when they failed to raise with your Honor the fact that my counsel had 17 been negligent in raising with this Court the single most material and dispositive piece of 18 evidence that was in the moving papers. As noted in one of the ethics opinions, referencing the 19 following Court of Appeals case: 20 "[A]n attorney has a duty not only to tell the truth in the first place, but a duty to 'aid the

"[A]n attorney has a duty not only to tell the truth in the first place, but a duty to 'aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.' (51 Cal.App. at p. 271, italics added.) Observance of this duty, we might add, prevents the waste of judicial resources, and the opposing party's time and money.<sup>8</sup>"

I will, after submission of this pleading to this Court, begin compiling my email records

<sup>24</sup> with Mr. Demian, Mr. Weinstein and Ms. Austin and intend to file complaints against each of

<sup>25</sup> them with the State Bar of California regarding their actions in this case. As to Mr. Weinstein

27

26

21

22

23

<sup>2</sup>/<sup>8</sup> Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 980–981 [87 Cal.Rptr.2d 719], as modified on denial of reh'g (Aug. 13, 1999)

-11-

and Ms. Austin, for bringing and maintaining a lawsuit with no probable cause. And, as to Mr. Demian, for his professional negligence and, as argued below, potentially fraudulent behavior.

D. Emotional and Financial Pressure

1

2

3

4 Submitted herewith to this Court is the Secured Litigation Financing Agreement, which, 5 because of confidentiality provisions and with this Court's approval, shall not be made public. 6 However, as detailed therein, because of this litigation, I have been continually forced to sell and 7 negotiate for financing for my businesses, personal, professional and litigation needs. To 8 summarize, on March 21, 2017, when I sold my Property to the Third-Party Buyer, provided the 9 CUP was issued, I was going to receive \$2,000,000; a 20% equity stake in the business; and a 10 guaranteed \$10,000 a month payment for 10 years (minus agent and transaction fees). Assuming 11 the CUP was not issued, I would have received \$100,000 and kept my Property, from which I 12 have run my business and non-profit 151 Farms for over 20 years. As of the day I submit this 13 pleading with this Court, if I fail to prevail in this litigation, given all of the liens against my 14 Property required to finance this litigation, I will be left completely destitute and with no home.9 15 ARGUMENT 16 A. Due to Counsel's Negligence, the Court Incorrectly Denied my TRO Motion 17 "[T]he elements of a cause of action for breach of contract are (1) the existence of the 18

contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and
(4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th

20 811, 821 (2011)

21

27

28

a. Geraci Breached The Agreement Reached on November 2, 2016

Neither party disputes an agreement was reached on November 2, 2016. However, as
described above, Geraci's contention that the November Receipt is the full and final agreement
between the parties for the purchase of the Property is completely contradicted by his own
admission on the same day the November Receipt was executed. See Exhibit 4.

As noted, Geraci has never contested the Confirmation Email and, thus, Geraci's

<sup>9</sup> See supporting declarations of Darryl Cotton,

-12-

subsequent silence show that he admits the existence of those terms - specifically, that "any
final" agreement, would contain my 10% equity stake. (See, e.g., Keller v. Key System Transit
Lines (1954) 129 Cal.App.2d 593, 596 ["The basis of the rule on admissions made in response to
accusations is the fact that human experience has shown that generally it is natural to deny an
accusation if a party considers himself innocent of negligence or wrongdoing."].

7

b. <u>Geraci and Berry's Reliance on the Statute of Frauds and the Parol Evidence Rule Is</u> <u>Misplaced</u>

8 It appears that Geraci's complaint and his entire defense to my cross-complaint is 9 premised on the Statute of Frauds. As discussed above, Geraci's admission that the November 10 Receipt is not the final agreement is damning and dispositive. His attempt to cling to a 3-11 sentence one page document as the be-all end-all for our deal is not credible under any 12 reasonable interpretation of the evidence. The fact is, the 3-sentence one page document is, on its 13 face, ambiguous and the terms we actually agreed upon are reflected in our emails and texts, 14 which are reliable, credible, and controlling. Indeed, the Court previously ruled as such on 15 November 6, 2017, when it ruled against Geraci's statute-of-frauds-and-parol-evidence-rule-16 based demurrer. Thus, with the Court's ruling, there is no legal basis at all on which Geraci can 17 prevail in this action.

18 Moreover, the statute of frauds does not apply and is not permitted to be used for an 19 unconscionable fraud or to unjustly enrich a third party, which would be the result if the Court 20 were now to cancel its previous determination that the Statute of Frauds is no bar to Cotton. The 21 California Supreme Court is clear on this point – the doctrine of promissory estoppel has been 22 "consistently applied by the courts of this state to prevent fraud that would result from refusal to 23 enforce oral contracts in certain circumstances." (Monarco v. Lo Greco (1950) 35 Cal.2d 621, 24 623.) Per the agreement reached by the parties in November, Geraci was to pay \$800,000 and 25 ensure I received at least \$10,000 a month from operations of the MMCC which would last for 26 an estimated 10-year period at minimum. This is an obligation of approximately \$2,000,000. 27 Thus, Geraci is estopped from asserting the statute in this case as it is both an unconscionable act 28

-13-

1 and it would result in an unjust enrichment to Geraci of \$1,200,000 – minimum.

| 2          | c. Cotton Will Be Irreparably Harmed if the Court Does Not Grant the Injunction  |
|------------|--|
| • 3        | It is clear based on the above that Geraci brought this action with no probable cause  |
| 4          |  |
| 5          | attempting to acquire the property through a vexatious lawsuit. However, at some point, any  |
| 6          | party who brings a lawsuit with no probable cause will realize, as the case progresses, that the   |
| 7          | trial court will be able to determine what is really going on. At that point, any such party must  |
| 8          | take what actions they can to mitigate their actions. I realized that, which was the basis of my   |
| 9          | TRO request. I believed I would ultimately prevail on the merits of my case, but wanted to   |
| _          | ensure that Geraci could not withdraw and/or sabotage the CUP application to mitigate his  |
| 10         | damages to me.   |
| 11<br>· 10 | Ahbay Schweitzer is an architect, a building designer and the owner of Techne, a local   |
| · 12       | design firm that was engaged by Larry Geraci to acquire the CUP at the Property. Schweitzer is   |
| 13         | Geraci's exclusive agent. Per Schweitzer's declaration regarding the issuance of the CUP at the  |
| 14         | Property, he has:  |
| 15         | "Been engaged in the application process for this CUP application for<br>approximately twelve (12) months so far[and] [t]here is one major issue left to     |
| 16<br>17   | resolve regarding a street dedication. I expect this issue to be resolved within the next six (6) weeks." (See Exhibit 7 - Declaration of Abhay Schweitzer.) |
| 18         | Schweitzer executed his declaration on October 20, 2017. Thus, it is possible that Geraci,   |
| 19         | now realizing that at this point the truth would come out, may already have taken steps to   |
| 20         | covertly sabotage the CUP application to prevent it from being issued. This is my biggest fear.  |
| 21         | Though I am distressed every day because of this entire situation, the denial of the TRO is what   |
| 22         | is driving me literally insane the fact that every day that has passed since the TRO motion was  |
| 23         | denied has made it clear to Geraci that he is going to lose and he has had so much time to take  |
| 24         | covert actions to sabotage the CUP application in a way that will not be possible to discern and   |
| 25         | will prevent him from being legally liable. By doing so, if I ultimately prevail in this lawsuit, his  |
| 26         | damages will have been mitigated by <u>millions</u> .  |
| 27         | I note, per Mr. Schweitzer's declaration, the second most important and final item that  |
| 28         | These, per this converteer is decidration, the second most important and mainten till that   |
|            | -14-   |
|            | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL   |

| 1        | will be required to issue the CUP is a public hearing which he estimates to take place in March.  |
|----------|---|
| 2        | In other words, Geraci still has the ability to sabotage the CUP application before this matter is  |
| 3        | even scheduled for trial.   |
| 4        | The harm I face is all-encompassing, affecting my professional, personal, and every   |
| 5        | aspect of my life. Those who are close to me have seen me slowly be worn down, but the mental   |
| 6<br>7   | and psychological stress is real. The negative effect to me and everything of import in my life is  |
| 8        | read. Please see my supporting declaration submitted herewith, as well as those of (i) Don Casey,   |
| 9        | (ii) Michael Kevin McShane, (iii) Shawna Salazar, (iv) Sean Major, (v) Cindy Jackson, (vi)  |
| 10       | James Whitfield, (vii) Michael Scott McKim and (viii) Cheryl Morrow (all attached hereto as   |
| 11       | Exhibit 15)   |
| 12       |   |
| 13       | B. Writ of Supersedeas  |
| 14       | "A writ of supersedeas may be granted only upon a showing that (a) appellant would  |
| 15       | suffer irreparable harm absent the stay, and (b) the appeal has merit. [See Smith v. Selma  |
| 16       | Community Hosp. (2010) 188 CA4th 1, 18, 115 CR3d 416, 432]. <sup>10</sup>   |
| 17       | As argued above, (i) I will suffer irreparable harm if Geraci is allowed to withdraw and/or   |
| 18       | covertly sabotage the CUP application and (ii) my appeal has merit because, but for Mr.   |
| 19       | Demian's incompetence, this Court would have approved my TRO application. <sup>11</sup>   |
| 20<br>21 | "CCP § 923 grants the appellate court virtually unlimited discretion to make orders to  |
| 21       | preserve the status quo in protection of its own jurisdiction, including issuance of a stay order other than supersedeas. [CCP § 923; <i>People ex rel. San Francisco Bay</i>       |
| 22       | Conservation & Develop. Comm'n v. Town of Emeryville (1968) 69 C2d 533, 538-539, 72 CR 790, 793]  |
| 24       | (a) [7:274] "Stay" to preserve status quo following denial of TRO or injunction:  |
| 25       | Where a temporary restraining order or injunction has been denied and the defendant<br>threatens to perform the act in question, a stay of the trial court order obviously will not |
| 26       | "preserve the status quo." Here, the appellate court has authority to issue a "stay" (as  |
| 27       | <sup>10</sup> E.Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E   |
| 28       | <sup>11</sup> See Declarations of Darryl Cotton   |
|          | -15-  |
|          | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL  |

.

.

•

•

1 distinguished from supersedeas) enjoining defendant from doing the action in question pending the appeal. [CCP § 923-court of appeal may "make any order appropriate to 2 preserve the status quo" during pendency of an appeal; People ex rel. San Francisco Bay Conservation & Develop. Comm'n v. Town of Emeryville, supra, 69 C2d at 536-539, 72 3 CR at 792-7941"<sup>12</sup> 4 At the TRO hearing, your Honor reviewed the proposed TRO order and asked Mr. 5 Weinstein what would be wrong with preventing his client from withdrawing the CUP 6 application on the Property. Mr. Weinstein replied something to the effect that his client should 7 not be prevented from doing as he wishes. (See Exhibit 8 Declarations of Elizabeth Emerson 8 (stating "At the hearing, the judge asked Mr. Weinstein what would be wrong with preventing 9 the withdrawal of the CUP application. Mr. Weinstein replied something about his client having 10 freedom to do what he wanted.") and Mr. Mass (stating "Mr. Demian, counsel for Mr. Cotton, 11 did not raise any email arguments with the Court.") 12 In other words, given that Geraci brought forth this action to prevail with vexatious 13 tactics and not anticipating I would be able to secure financial backers to hire counsel, he would 14 at some point realize he will lose this case on the merits. In that case, knowing he would be liable 15 for damages, but that those damages are exponentially higher if the CUP is issued, he would be 16 incentivized to withdraw and/or through subterfuge have the CUP sabotaged so as to limit his 17 liability. Thus, this Court unknowingly *de facto* allowed Geraci to take an action that is in his 18 best interest but is unjust towards me – the destruction of the "fruits" that I would ultimately seek 19 in the Court of Appeals if I lost this action or if he simply delays this action long enough to 20 covertly sabotage the CUP application while he still has exclusive control. 21 Thus, even assuming I am incorrect about some facts and law above, allowing Geraci to 22 withdraw the CUP as this Court allowed would deprive the COA of its jurisdiction and CCP § 23 923 is perfectly on point here because it "grants the appellate court virtually unlimited discretion 24 to make orders to preserve the status quo in protection of its own jurisdiction, including issuance 25 of a stay order other than supersedeas." C. Writ of Mandate 26 27 <sup>12</sup> E.Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E 28 -16-DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL

|                 | A writ of mandate is appropriate where a beneficially interested petitioner has no plain,  |
|-----------------|--|
| S               | peedy and adequate remedy at law, and Respondent has a clear, present and ministerial duty, o  |
| h               | as abused its discretion. (Code of Civ. Proc., § 1085; see, e.g. Robbins v. Superior Court (198  |
| 3               | 8 C3d 199, 205 ("Robbins.")) For the reasons argued above, this Court should reverse its   |
| p               | position on the TRO Motion and direct the City to transfer control of the CUP application to m   |
| C               | Dr, at least, as requested below, appoint a receiver to manage the CUP application until the   |
| n               | nerits of this action are finally adjudicated and prevent Geraci from sabotaging the CUP   |
|                 | pplication.<br>D. <u>Ethical Considerations</u>  |
|                 |  |
|                 | As noted above, the case law language below cited to in the ethical opinions of the Stat   |
| E               | Bar of California, appears to be completely applicable here to the actions of counsel:   |
|                 | 1. Per the Supreme Court of California, "Business and Professions Code section 6128  |
| p               | provides in relevant part: 'Every attorney is guilty of a misdemeanor who is guilty of any   |
| d               | leceit or collusion, or consents to any deceit or collusion, with intent to deceive any party."  |
| 66 <sup>.</sup> | That section [6128] and subdivision impose a duty on attorneys to 'employ such means onl   |
| a               | s are consistent with truth, and never to seek to mislead the judge or any judicial officer by an  |
| a               | rtifice or false statement of fact or law." <sup>13</sup>  |
|                 | 2. The State Bar of California Standing Committee on Professional Responsibility and   |
| C               | Conduct Formal Opinion No. 2013-189 discusses "Deceitful Conduct" and cites to Datig v. Do   |
| B               | Books, Inc., a Court of Appeals case that states the following (all emphasis in original text):  |
|                 | Defense Counsel Failed to Do His Duty as an Officer of the Court and Acted in Direc<br>Violation of the Trial Court's Local Rules  |
|                 | Business and Professions Code section 6068 provides, in relevant part: "It is the duty of<br>an attorney to do all of the following: [¶] [¶] (b) To maintain the respect due to the<br>courts of justice and judicial officers. [¶] (c) To counsel or maintain such actions,<br>proceedings, or defenses only as appear to him or her legal or just, except the defense of |
|                 | <sup>13</sup> Silberg v. Anderson (1990) 50 Cal.3d 205, 219 [266 Cal.Rptr. 638, 786 P.2d 365], as  |
| <br>  n         | nodified (Mar. 12, 1990)   |
|                 |  |
|                 | -17-<br>DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL   |

| t        | t i   |
|----------|---|
|          |   |
|          |   |
| 1        | person charged with a public offense. [¶] (d) To <i>employ</i> , for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never                     |
| 2        | to seek to mislead the judge or any judicial officer by an artifice or false statement of fact  |
| 3        | or law." (Italics added.)   |
| 4        | Further, the Rules of Professional Conduct require that a member of the State Bar "[s]hall<br>not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of                   |
| 5        | fact or law." (Rules Prof. Conduct, rule 5-200(B).) (4) "'Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a                                  |
| 6        | serious offense.'" (Paine v. State Bar (1939) 14 Cal.2d 150, 154 [93 P.2d 103], italics   |
| 7        | added; see also <i>Di Sabatino v. State Bar</i> (1980) 27 Cal.3d 159, 162-163 [162 Cal.Rptr.<br>458, 606 P.2d 765]; <i>Garlow v. State Bar</i> (1982) 30 Cal.3d 912, 917 [180 Cal.Rptr. 831,                  |
| 8        | 640 P.2d 1106].) "Counsel should not forget that they are officers of the court, and while<br>it is their duty to protect and defend the interests of their clients, <i>the obligation is equally</i>         |
| 9        | <i>imperative to aid the court in avoiding error and in determining the cause in accordance</i><br><i>with justice and the established rules of practice.</i> " ( <i>Furlong v. White</i> (1921) 51 Cal.App.  |
| 10       | 265, 271 [196 P. 903], italics added.)  |
| 11       | [] We therefore find it is necessary to state, explicitly, that although a  |
| 12       | misrepresentation to the court may have been made negligently, not intentionally, it is<br>still a misrepresentation, and once the attorney realizes that he or she has misled the                            |
| 13       | court, even innocently, he or she has an affirmative duty to immediately inform the court   |
| 14       | and to request that it set aside any orders based upon such misrepresentation; also, counsel should not attempt to benefit from such improvidently entered orders. As the                                     |
| 15       | court stated in <i>Furlong v. White</i> , an attorney has a duty not only to tell the truth in the first place, but a duty to " <i>aid the court in avoiding error and in determining the cause in</i>        |
| 16       | accordance with justice and the established rules of practice." (51 Cal.App. at p. 271, italics added.) Observance of this duty, we might add, prevents the waste of judicial                                 |
| 17       | resources, and the opposing party's time and money. <sup>14</sup>   |
| 18       | 3. The State Bar of California Standing Committee on Professional Responsibility and  |
| 19       | Conduct Formal Opinion No. 2013-189 also states:  |
| 20       | Even when no duty of disclosure would otherwise exist, "where one does speak he must  |
| 21<br>22 | speak the whole truth to the end that he does not conceal any facts which materially qualify those stated. [Citation.] One who is asked for or volunteers information must be truthful, and                   |
| 22<br>23 | the telling of a half-truth calculated to deceive is fraud." <i>Cicone v. URS Corp.</i> (1986) 183<br>Cal.App.3d 194, 201. See <i>Goodman</i> , supra, 18 Cal.3d at pp. 346-347 and <i>Shafer v. Berger</i> , |
| 23<br>24 | <i>Kahn, Shafton, Moss, Figler, Simon &amp; Gladstone</i> (2003) 107 Cal.App.4th 54, 72 [131<br>Cal.Rptr.2d 777].   |
| 25       |   |
| 25<br>26 | See also <i>Vega</i> , supra, 121 Cal.App.4th at p. 294 ("it is established by statute 'that intentional concealment of a material fact is an alternative form of fraud and deceit equivalent to direct       |
| 27       |   |
| 28       | <sup>14</sup> <u>Datig v. Dove Books, Inc.</u> (1999) 73 Cal.App.4th 964, 980–981 [87 Cal.Rptr.2d 719], <u>as modified on denial of</u><br>reh'g (Aug. 13, 1999)  |
|          | -18-  |
|          | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL  |

.

| 1        | affirmative misrepresentation' [citations omitted] In some but not all circumstances, an   |
|----------|--|
| 2        | independent duty to disclose is required; active concealment may exist where a party '[w]hile<br>under no duty to speak, nevertheless does so, but does not speak honestly or makes          |
| 3        | misleading statements or suppresses facts which rnaterially qualify those stated." [Fn. ornitted.]); Lovejoy v. AT&T Corp. (2001) 92 Cal.App.4th 85, 97 [111 Cal.Rptr.2d 711];               |
| 4        | Stevens v. Superior Court (1986) 180 Cal.App.3d 605, 608 [225 Cal.Rptr. 624].  |
| 5        | Footnote 14 states:  |
| 6        | Cal. State Bar Formal Opn. No. 1996-146 ("A lawyer acts unethically where she assists<br>in the commission of a fraud by implying facts and circumstances that are not true in a             |
| 7        | context likely to be misleading."); cf. <i>Datig</i> , supra, 73 Cal.App.4th at pp. 980-81 (once attorney realized he had negligently misled the court, the attorney had an affirmative duty |
| 8        | to immediately notify the court).  |
| 9        | E. <u>Application of Ethical Considerations</u>  |
| 10       | Your Honor, this section is the part that makes rne sound like a conspiracy nut. Below I   |
| 11<br>12 | describe facts and provide documentation that can be independently verified. I respectfully  |
| 12       | request that, notwithstanding how outlandish my clairns are, you please consider that maybe, just  |
| 13       | rnaybe, they are true and that nurnerous officers of the court have engaged in unethical behavior.   |
| 15       | Attorney Gina Austin. First, Austin undisputedly knows that the Receipt is not the final   |
| 16       | agreement for my Property as she is the attorney that, after November 2, 2016, was drafting  |
| 17       | various versions of the purchase agreement for my property. She is named numerous times in   |
| 18       | ernails and texts between myself and Geraci. (See Exhibit 4.)  |
| 19       | On March 6, 2017, Geraci texted rne "Gina Austin is there she has a red jacket on it you   |
| 20       | want to have a conversation with her." (See Exhibit 9; all of the text messages between Geraci   |
| 21       | and myself including the quoted one above, all of which also rnake clear that Geraci was   |
| 22       | stringing me along and make numerous drafts to contracts for the purchase of my property after   |
| 23       | November 2016.) Austin was the headnote speaker at a local cannabis event on that day. I was   |
| 24       | unable to rnake the event, but rny Investor Mr. Hurtado was and he spoke with Austin briefly,  |
| 25       | letting her know that I would not be attending. (See Exhibit 2; Declaration of Joe Hurtado,  |
| 26       | Paragraph 4.)  |
| 27       | Second, at the TRO Motion hearing, per the Supreme Court and COA language above,   |
| 28       | Austin had <u>affirmative</u> duty to inform Your Honor that Mr. Dernian had been negligent in failing   |
|          | -19-   |
|          | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL   |

to bring to your attention the Confirmation Email.

1

2

3

4

5

6

7

8

9

10

Based on the ethics language above, it appears to me that Gina Austin has violated numerous ethical duties by bringing and maintaining this action against me when she knows it is completely founded on a lie.

Attorney Michael Weinstein. First, I have an email from myself to Mr. Weinstein that I will not attach here because I do not want this pleading stricken from the record because of Litigation Privilege discussed in the ethics opinions cited above. But, I will bring copies with me to Court on January 25<sup>th</sup>. These emails to Mr. Weinstein recount the entire history of the dealings between Geraci and me and provide emails, texts and provide him the evidence he needed to know that his client Geraci had no probable cause to bring this lawsuit.

11 Second, I will not assume that Geraci told Weinstein about the draft purchase agreements 12 that Austin was working on. Assuming it can be argued that Weinstein was not aware of the 13 concept of promissory estoppel at the onset of this litigation and that he believed the SOF and the 14 PER would prevent the Confirmation email, thus providing probable cause for this suit, no later 15 than when this Court denied Geraci's demurrer, Weinstein knew this case had no probable cause 16 and that maintaining it was simply a vexatious tactic to fraudulently acquire my Property.

17 Third, at the TRO Motion hearing, for the same reasoning put forth above, Weinstein was 18 obligated to inform this Court about Mr. Demian's negligence and provide the Confirmation 19 Email.

20 Fourth, after the oral hearing in front of your honor on January 18, 2018, Mr. Weinstein 21 approached me to discuss access to the Property for soil samples to continue the CUP application 22 and to discuss a possible settlement of this action regarding the Property and the CUP 23 application. I am not clear what he means, Mr. Weinstein has had the Third-Party Purchase 24 Agreement for since early in this litigation and it has been discussed. He knows I was forced to 25 unconditionally sell my interest in the Property on April 15, 2017, to pay off debts and continue 26 financing this litigation. See Exhibit 5 ("Seller hereby transfers and sells to Buyer, with all the 27 associated rights and liabilities, his ownership, rights and interests in the property and the 28

1 associated CUP application pending before the City of San Diego for \$500,000.") As that 2 agreement makes clear, the condition precedent for closing is the successful resolution of this 3 lawsuit. I am assuming that Mr. Weinstein wants me to engage in some kind of legal 4 machinations by which I can void my agreement with the Third-Party Buyer so I can transfer the 5 Property to Geraci. Even if there were some legal mechanism that would allow that (and it does 6 not appear to me that is should be allowed in any circumstance as it would violate the implied 7 covenant of good faith and fair dealing in every contract), I would not do so. Even if lawful, it is 8 not ethical and it would make me just as bad as Geraci - the very idea of which is nauseating. 9 Attorney David Demian. First, Mr. Demian started off his representation on fraudulent 10 grounds. My Investor, Mr. Hurtado negotiated a monthly \$10,000 a month payment with him for 11 his services. It was expressly discussed and negotiated that we would speedily and quickly 12 resolve my legal matters as quickly as possible and that the \$10,000 would not be a limitation. 13 However, when he sent me the retainer agreement, it did not contain the \$10,000 monthly 14 financing concept. Mr. Hurtado spoke with Mr. Adam Witt, Mr. Demian's junior associate, who 15 informed him that Mr. Demian did not want to put such a provision in the agreement because his 16 partners would not like it. However, that he should not worry because so long as \$10,000 was 17 being paid, that my representation would not be impeded. Mr. Hurtado pushed back hard, being a 18 former attorney, he knew that ultimately what mattered was the language. Mr. Witt spoke with 19 Mr. Demian and called Mr. Hurtado and myself back, they proposed, and I am sure that they 20 never would have anticipated that they would find themselves in this position, that execute the 21 retainer agreement and that I note in the cover email our \$10,000. I am assuming that they filed 22 the retainer agreement with their firm Mr. Demian did not record the email reflecting our 23 \$10,000 a month agreement. At that point, the reasoning that they provided made sense, that so 24 long as \$10,000 was paid, that they would continue their services. I understand that businesses 25 carry balances with vendors and clients. However, what is now apparent, is that Mr. Demian did 26 not intend to fully represent me as he promised. He was intending to only do up to \$10,000 a 27 month of work. Either that, or he intended to fraud his partners. I do not know the words, but one 28 -21-

way or another, he was defrauding me or his partners. (See Exhibit 6: email to Adam Witt confirming that notwithstanding language in the retainer agreement, only \$10,000 would be paid to FTB.)

1

2

3

4

14

Second, in his opposition to Geraci's demurrer, Mr. Demian did not raise the affirmative 5 defense of promissory estoppel as articulated by the Supreme Court case of Monarco. Rather, it 6 was Mr. Hurtado, who attended the oral arguments for the hearing, that felt that something had to 7 be wrong. Mr. Hurtado did some "Googling" emailed Mr. Demian and approximately 2 weeks 8 after the demurrer hearing emailed Mr. Demian about the concept of promissory estoppel and the 9 Monarco case discussing the application to Mr. Cotton's case (See Exhibit 10), Mr. Demian 10 included the Monarco case/promissory estoppel concept in the TRO motion that he submitted to 11 this Court. In other words, I respectfully submit to this Court that this reflects that Mr. Demian 12 clearly failed to meet his ethical obligations to me by even doing the most basic legal research 13 required to properly represent me before this Court.

Third, Mr. Demian's actions at the TRO Motion hearing. As discussed ad nauseum 15 above, he failed to raise the Confirmation Email. After the hearing, when Mr. Demian and the 16 attorney for the City left the courtroom, the attorney for the City told Mr. Demian something to 17 the effect of "you should have won based on the moving papers, but oral argument got you." Mr. 18 Hurtado was standing no more 3 feet away from them when this was stated as he was enraged 19 that Mr. Demian performed so poorly. Per the declarations of Mr. Mass and Ms. Elizabeth, Mr. 20 Hurtado loudly berated Mr. Demian about his poor performance. Per Mr. Hurtado, he berated 21 Mr. Demian for being unprepared and failing so miserably. Mr. Demian actually had the gall to 22 retort to Mr. Hurtado that investing in litigation was always "risky" and, presumably, Mr. 23 Hurtado should be less upset. Notably, and I believe the most actionable item against Mr. 24 Demian, when I replied to Mr. Demian noting that even the City attorney stated that he should 25 have won, he replied by email stating: "Also, as to the City Attorney, she told me my papers and 26 oral argument were excellent. She did not say we should have won." (See Exhibit 11.) Mr. 27 Demian is blatantly lying here, obviously and, at least it appears to me, foolishly attempting to 28

-22-

| 1<br>2 | cloud title. Specifically, the statute allows for a judgement on the merits similar to summary  |  |
|--------|---|--|
|        | adjudication. Given the facts of my case, this motion should have been pursued by any   |  |
| 3      | competent attorney who was aware of these facts. Mr. Austin is a criminal defense attorney who  |  |
| 4      | has only agreed to help upon the favorable resolution of my appeal. How is it that a criminal   |  |
| 5      | defense attorney within two days of hearing the facts of my case can discover a motion that can   |  |
| 6      | quickly and speedily allow this Court to get to the merits of the case, avoiding all of the   |  |
| 7      | vexatious tactics employed by Geraci, such as these Motions to Compel that are before the Court   |  |
| 8      | and which are completely frivolous (there is absolutely no more information that can be provided  |  |
| 9      | through discovery that will contradict the Confirmation Email.) In other words, this provides   |  |
| 10     | additional support that Mr. Demian was negligent and/or purposefully fraudulent in his actions  |  |
| 11     | towards me as he was seeking not seeking to end this litigation quickly, rather, he was hoping to   |  |
| 12     | prolong it to increase his legal fees. As of today, Mr. Demian has been paid approximately  |  |
| 13     | \$60,000. I note, at \$10,000 a month as per our email agreement. And, on January 10, 2018, Mr.   |  |
| 14     | Demian emailed me a bill for his services up to the TRO Motion hearing – he is requesting   |  |
| 15     |   |  |
| 16     | \$91,943.45 in addition to the approximate \$60,000 he has already received. (See Exhibit 12;   |  |
| 17     | invoices from FTB for \$91,943.45.)   |  |
| 18     | Your honor, this is not just. His negligence and active deceit are worthy of nothing but  |  |
| 19     | contempt. I implore you to exercise your powers to the fullest extent to grant me what relief you   |  |
| 20     | can against Mr. Demian for his actions described herein.<br>The City Attorneys  |  |
| 21     | "The notion that government might be "conspiring" to violate the rights of citizens is  |  |
| 21     | more apt to invite derision than concern [y]et, when conspiracy is understood simply as<br>an agreement to do wrong, the possibility of that government might conspire against  |  |
| 22     | citizens is not only plausible but likely. Contemporary government often operates through bureaucratic consensus, which necessarily involves the joint actions of multiple parties.   |  |
|        | By its nature then governmental decision-making that goes awry is often amenable to   |  |
| 24     | characterization as a "conspiracy." Most practitioners recognize that federal law<br>authorizes civil actions against persons who, acting under color of law, directly violate  |  |
| 25     | the civil rights of others. These suits are typically brought under the now familiar section 1983 of title 41.  |  |
| 26     | It is well known from a jurisprudence perspective that the City is anti-cannabis. <sup>15</sup> The   |  |
| 27     |   |  |
| 28     | <sup>15</sup> See County of San Diego v. San Diego NORML, 165 Cal. App. 4 <sup>th</sup> 798, 81 in which two California counties (San Diego and San Bernardino challenged the California Compassionate Use Act (Proposition 215) and subsequent |  |
|        |   |  |
|        | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL  |  |

r 1

1 create a false record of what took place in order to limit his liability. However, I respectfully 2 submit to this Court, now that you have reviewed the Confirmation Email and the Monarco case, 3 it is simply not credible to believe the City attorney told him his oral argument was "excellent." 4 Alternatively, I respectfully request that this Court ask the City attorney on January 25th what she 5 told him after the oral hearing. I believe this to be incredibly important as Mr. Demian without a 6 doubt failed his professional obligations by failing to raise the Confirmation Email. He then 7 failed his ethical obligations by failing to inform the court of his negligence. Lastly, his email 8 stating that Mr. Hurtado is lying and that his oral argument was "excellent" actually crosses the 9 line and goes from negligence to, as noted above, deceit. I implore this Court to get to the bottom 10 of this issue. My retainer agreement with Mr. Demian has an arbitration provision that prevents 11 me from suing him for legal malpractice. "Honesty in dealing with the courts is of paramount 12 importance, and misleading a judge is, regardless of motives, a serious offense." (Paine v. State 13 Bar (1939) 14 Cal.2d 150, 154 [93 P.2d 103], italics added; see also Di Sabatino v. State 14 Bar (1980) 27 Cal.3d 159, 162-163 [162 Cal.Rptr. 458, 606 P.2d 765]; Garlow v. State 15 Bar (1982) 30 Cal.3d 912, 917 [180 Cal.Rptr. 831, 640 P.2d 1106].) Mr. Demian here is not just 16 seeking to mislead, he is attempting active deceit. This goes beyond serious. Please your honor, 17 as an officer of the court he was beholden to you to do what was right. Instead of making things 18 right, he sent me an email stating he was withdrawing from my case before even speaking with 19 me! He set in motion a set of events that compounded the irreparable harm to me. 20Fourth, on December 11, 2017, a day before oral hearing on my Motion for 21 Reconsideration, that I was positive would be approved, I spoke with another local attorney 22 named Jacob Austin as I was looking for new counsel. I had previously been introduced to Mr. 23 Austin, who was tentatively planning to help me with my various legal matters before, 24 unfortunately I ultimately chose to go with Mr. Demian given what appeared to be his superior 25 expertise. Here is what is important to note: Mr. Austin brought to my attention the ability to 26 bring a motion to expunge a *lis pendens* pursuant to a section in the CCP. The purpose of this 27 motion is to speedily address meritless lawsuits that seek to attach real property and unlawfully 28 -23-

| 1        | City Attorney's Prosecutorial office, though while not germane to these Motions to Compel, but  |
|----------|---|
| 2        | described in my supporting declaration, took advantage of a plea agreement I entered into and   |
| 3        | extorted \$25,000 from me (the consequences of which are described and detailed in the Secured  |
| 4        | Litigation Investment Agreement). It also appears to me the City's Development Services   |
| 5        | violated my Constitutional due process rights by failing to provide notice to me and continuing   |
| 6        | to process the CUP application after explicitly telling me that they would not until they received  |
| 7        | a grant deed from me, which I never provided, and working with Geraci on the CUP application.   |
| 8        | Furthermore, that the City, when it filed its Answer to my application for a Writ of Mandate,   |
| 9        | after the TRO Motion hearing knowing Demian had been negligent, seeking legal fees and  |
| 10       | accusing me, among other things, of being guilty of "unclean hands," that is also is violating my   |
| 11       | rights because the City knew there was no probable cause against me.  |
| 12       | Thus, it appears to me, that I could file a case against the City tomorrow in federal court   |
| 13       | pursuant to Section 1983 alleging a conspiracy against me by the City because of my pro-  |
| 14       | cannabis political activism. I have no desire to do so. I want to end this endless, soul-crushing   |
| 15       | litigation. As described below, I respectfully request this Court's help.   |
| 16       | CONCLUSION  |
| 17<br>18 | The Supreme Court of California case of Neary v. Regents of University of California has  |
| 18       | become my last hope and I have read and re-read this case as it is my only source of strength   |
| 20       | right now. Ironically, it is for this reason that I have requested from this Court a written opinion  |
| 20       | regarding what I know are my amateurship attempts at legal formatting, writing and reasoning. If  |
| 21       | I truly am culpable somehow and Geraci is entitled to my Property, I will similarly carry this  |
| 22       | Court's decision with me to prevent me from acting out on my anger against Geraci and   |
| 23       | opposing counsel. (Even if I am crazy, Mr. Demian is worthy of contempt under any scenario.)  |
| 24<br>25 | The opinion and the dissent in <i>Neary</i> discuss the best way to effectuate justice in our   |
| 26       | society taking into account the practical realities of the world we all live in. I empathize with   |
| 20<br>27 | George Neary, the plaintiff is the case, as did the Supreme Court of California, it stated:   |
| 28       | legislation requiring counties to issue identification cards to qualified patients and primary caregivers, on the ground that these measures were preempted by provisions of the federal Controlled Substances Act. |
|          | -25-  |
|          | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL  |

1 His plea is sympathetic: "Neary has spent more than twelve years in an expensive, timeconsuming, emotionally wrenching, and destructively distracting struggle which has 2 included enough twists, turns, setbacks and victories for a novel. He has finally resolved that struggle through negotiation and voluntary agreement," Thwarting the settlement 3 would frustrate the parties' mutual desire for an immediate end to their now 13- year-old dispute. The parties have pummeled each other long enough and have staggered to their 4 respective corners. We choose to give them help, not the prospect of further battering. 5 6 This statement holds great power for me. The Supreme Court recognized Mr. Neary's 7 extraordinary circumstances and the unique situation his case represented to substantive justice. 8 They recognized his plea as being "sympathetic" and I hope this Court can recognize the 9 extraordinary circumstances I am in and do the same for me. Neary also states: In ordinary civil actions such as the one before us, the parties come to court seeking 10 resolution of a dispute between them. The litigation process they encounter is fraught with complexities, uncertainties, delays, and risks of many kinds. Different judges and 11 juries may respond in different ways to the same evidence and argument. Public judicial 12 proceedings may result in adverse publicity and unwanted disclosure of previously confidential information. Damage awards (or failure to recover) may cause financial 13 hardship or ruin. These observations are not original. "More than a century ago, Abraham Lincoln gave the following advice: 'Discourage litigation. Persuade your neighbors to 14 compromise wherever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses, and waste of time.' This was sage advice then and remains so 15 now." (Lynch, California Negotiation and Settlement Handbook, supra, p. vii (foreword by California Supreme Court Chief Justice Malcolm M. Lucas).)<sup>16</sup> 16 17 [...] The primary purpose of the public judiciary is "to afford a forum for the settlement of litigable matters between disputing parties." (\*282 Vecki v. Sorensen (1959) 171 18 Cal.App.2d 390, 393 [340 P.2d 1020].) We do not resolve abstract legal issues, even when requested to do so. We resolve real disputes between real people. (Pacific Legal 19 Foundation v. California Coastal Com. (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104, 20 655 P.2d 306].) This function does not undermine our integrity or demean our function. By providing a forum for the peaceful resolution of citizens' disputes, we provide a 21 cornerstone for ordered liberty in a democratic society. 22 The Court of Appeal's concern for the integrity of trial court judgments is flawed in other respects. First, the notion that such a judgment is a statement of "legal truth" places too 23 much emphasis on the result of litigation rather than its purpose. "In all civil litigation, 24 the judicial decree is not the end but the means. At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant that the judgment 25 produces-the payment of damages, or some specific performance, or the termination of some conduct. Redress is sought through the court, but from the defendant. ... The real 26 value of the judicial pronouncement-what makes it a proper judicial resolution of a 'case 27 <sup>16</sup> Neary v. Regents of University of California (1992) 3 Cal.4th 273, 280 [10 Cal.Rptr.2d 859, 28 834 P.2d 119] -26-DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL

|          | ۶ .  |
|----------|--|
| 1        | or controversy' rather than an advisory opinion-is in the settling of some dispute which affects the behavior of the defendant towards the plaintiff." (Hewitt v. Helms (1987) 482 |
| 2        | U.S. 755, 761 [96 L.Ed.2d 654, 661, 107 S.Ct. 2672], original italics.) <sup>17</sup>  |
| 3        | Your Honor, I respectfully submit to you the language above and note that Geraci's   |
| 4<br>5   | actions make a mockery of the Supreme Court of California and this Court. Above, the Supreme   |
| 6        | Court of California discusses the challenges to individuals "[i]n ordinary civil actions" and that   |
| 7        | the Courts "resolve[s] real disputes between real people," this is not an "ordinary" action in   |
| 8        | which there is a "real" dispute here. It is a fabricated one. "Redress is sought through the court,  |
| 9        | but <i>from</i> the defendant." This vexatious lawsuit makes a mockery of the very basis of our  |
| 10       | judicial system – it is a blatant unlawful attempt by Geraci to acquire my Property from the   |
| 11<br>12 | Court and our judicial system. Geraci knew this case had no merit, but he brought it anyway  |
| 12       | knowing my financial predicament, of his partial making by failing to provide funds he promised  |
| 14       | and that he knew I was relying on, and filing a lis pendens to prevent me from entering into other   |
| 15       | agreements. Had I not entered into an agreement with Mr. Martin the same day I had terminated  |
| 16       | the agreement with Geraci, given that Weinstein served me the next day with the Complaint and  |
| 17       | lis pendens, I would not have been able to legally enter into that agreement and I would have lost   |
| 18<br>19 | everything by now. But for my desperate need for capital at the time, Geraci stringing me along  |
| 20       | (as our email communications make clear) and Weinstein's legal practice tactics would have   |
| 21       | been successful and I would not be before this Court attempting, however inarticulate, to see  |
| 22       | justice done.  |
| 23       | Your Honor it is already after 11:00 am and will already late and running to get this  |
| 24       | printed to submit this pleading to your Court downtown. Please forgive the failings herein. I  |
| 25       | would request a continuance, but I cannot, because it although shames me to say this in a  |
| 26<br>27 | permanent public record, I am compelled to do so - there are people depending on me: I have  |
| 27       | <sup>17</sup> Neary v. Regents of University of California (1992) 3 Cal.4th 273, 281–282 [10 Cal.Rptr.2d 859, 834 P.2d 119]  |
|          | -27-   |
|          | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL   |

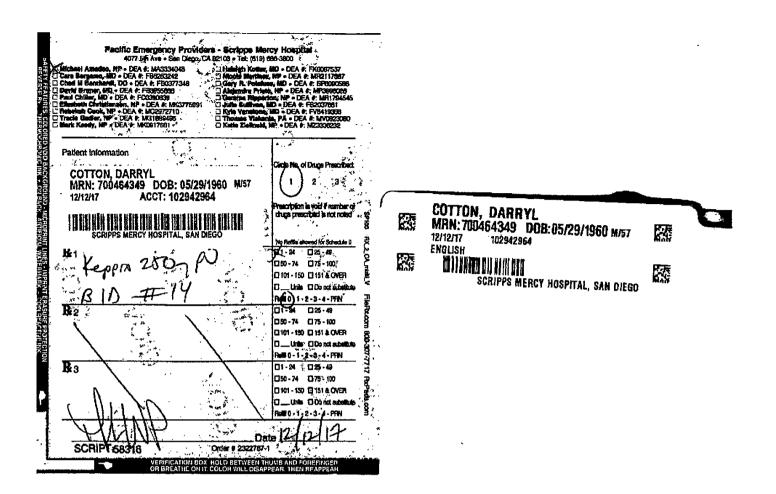
| 1        | become estranged from my partner, I am behind on payroll, debts, and I am living at the  |  |
|----------|--|--|
| 2        | Property. This case left me destitute. I do the best I can to keep up appearances, but I cannot run  |  |
| 3        | a commercial business with no capital and a lis pendens on the Property. I have absolutely no  |  |
| 4        | funds. I long ago maxed out any and all financial sources of help. Attached hereto as Exhibit 13   |  |
| 6        | are the water and electrical bills that are due, which are scheduled to be turned off tomorrow. I  |  |
| 7        | have already asked for repeated extensions. I do not know whether I will have electricity when I   |  |
| 8        | see you on Thursday. If my father were not the first note holder, I would already not even have a  |  |
| 9        | place to stay (see Exhibit 14; Declaration of Dale L. Cotton, stating "were this a normal business   |  |
| 10       | relationship, I would have foreclosed on this property")   |  |
| 11       | Please, in the interest of real, substantive justice, investigate my allegations here. I clearly   |  |
| 12<br>13 | understand how outrageous they seem. Please do not do not elevate form over substance and  |  |
| 13       | deny this pleading or the relief you can grant me on procedural, non-substantive grounds. I  |  |
| 15       | implore you to use your power to its fullest extent to grant me whatever relief that you can,  |  |
| 16       | which I do not even know what it is, so I cannot ask for it. I understand that you must vet my   |  |
| 17       | allegations herein as to Gina Austin and Micahel Weinstein. But, as to Mr. Demian, he is clearly   |  |
| 18       | culpable for failing to raise the Confirmation Email at the oral hearing, for failing to let you   |  |
| 19<br>20 | know that he did so in the aftermath, and, blatantly attempting to create a false record to deceive  |  |
| 20<br>21 | this Court. I ask that you please set in place whatever motion is necessary to sanction him.   |  |
| 22       | "Violation of statewide rules of court and/or local rules is sanctionable by payment of the  |  |
| 23       | opposing party's reasonable expenses and counsel fees. (Cal. Rules of Court, rule 227.)<br>Furthermore, use of sanctions against both attorneys and clients has been commended by      |  |
| 24       | our Supreme Court as an appropriate method for dealing with unjustified litigation.<br>(Sheldon Appel Co. v. Albert & Oliker (1989) 47 Cal.3d 863, 873-874 [254 Cal.Rptr. 336,         |  |
| 25       | 765 P.2d 498].) (3c) Based on our review of this record, it appears that defense counsel violated several statewide rules of court and local rules, and that these violations resulted |  |
| 26       | in unnecessary litigation and cost to plaintiff and her attorney in time and money. We therefore remand this matter to the trial court to consider, and, if appropriate, award         |  |
| 27       |  |  |
| 28       |  |  |
|          |  |  |
| ļ        | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL   |  |

| 1        | sanctions against defendants and/or their attorneys and in favor of plaintiff." <sup>18</sup>                |
|----------|--|
| 2        | "[I]t is well established that California's Constitution provides the courts, including the                  |
| 3        | Courts of Appeal, with inherent powers to control judicial proceedings. (Cal. Const., art. VI, §             |
| 4<br>5   | 1; Walker v. Superior Court (1991) 53 Cal.3d 257, 266-267 [279 Cal.Rptr. 576, 807 P.2d                       |
| 6        | 418]; Keeler v. Superior Court (1956) 46 Cal.2d 596, 600 [297 P.2d 967].) To the same effect,                |
| 7        | Code of Civil Procedure section 128, subdivision (a)(8) authorizes every court '[t]o amend and               |
| 8        | control its process and orders so as to make them conform to law and justice.' This provision is             |
| 9        | consistent with and codifies the courts' traditional and inherent judicial power to do whatever is           |
| 10       | necessary and appropriate, in the absence of controlling legislation, to ensure the prompt, fair,            |
| 11<br>12 | and orderly administration of justice." <sup>19</sup> (Neary v. Regents of University of California (1992) 3 |
| 12       | Cal.4th 273, 276–277.)   |
| 14       | Your Honor, I conclude with a plea, I realize that you are an arbitrator and must remain                     |
| 15       | impartial. However, this Court is meant to give justice and vindicate the rights of the wronged.             |
| 16       | At the Court hearing this Thursday, unless Austin desires to perjure herself, you can ask her if             |
| 17       | she drafted the purchase agreements in early 2017, thereby reflecting her knowledge that the                 |
| 18       | November 2016 agreement was not a final purchase agreement as Geraci and Weinstein allege.                   |
| 19<br>20 | At the hearing, you can ask Weinstein why, given this Court's ruling denying his demurrer, he                |
| 20       | has continued to prosecute this case that has no factual or legal basis. I realize that my requests          |
| 22       | may be excessive, but, I respectfully note the following in the hopes that it supports my requests           |
| 23       | here. In Ross v. Figueroa (2006) 139 Cal.App.4th 856; 43 Cal. Rptr. 3d 289, the Court of Appeal              |
| 24       | [explicitly recognized the necessity and approved active judicial behavior in providing                      |
| 25       | affirmative assistance to pro se clients] such as myself: "the judge cannot rely on the pro per              |
| 26       | <sup>18</sup> Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 982–983 [87 Cal.Rptr.2d 719], as          |
| 27<br>28 | modified on denial of reh'g (Aug. 13, 1999)  |
| 20       | -29-   |
|          | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL   |

| 1 litiga      | nts to know each of the procedural steps, to raise objections, to ask all the relevant questions  |
|---------------|---|
| 2 of wi       | tnesses, and to otherwise protect their due process rights."                                      |
| 3             | Lastly, I sincerely believe that this case also represents something larger than myself and       |
| 4    that is  | f the damage and harm caused to me by Geraci and perpetuated and augmented by the acts            |
| 5 of cor      | unsel as described above, including their manipulations of this Court, are allowed to pass,       |
|               | it will prove that the concern articulated by Justice Kennard in Neary in 1992 has ceased to      |
|               | n already too common perception," but has in fact become reality and "the quality of justice      |
|               | ant can expect is proportional to the financial means at the litigant's disposal." Neary v.       |
| 10            | nts of University of California (1992) 3 Cal.4th 273, 287 (emphasis added).                       |
| 11            |   |
| 12 Dated      | d: January 22, 2017   |
| 13            | Att   |
| 14            | By:<br>DARBYL COTTON  |
| 15            |   |
| 17 Stater     | ication: I, Darryl Cotton, verify that all<br>nents herein made that declare actions or All       |
| belief        | Is as to myself are true and correct and I<br>re under penalty of perjury under the DARPYL COTTON |
|               | of California that the foregoing is true<br>orrect.   |
|               | verify and confirm that all exhibits<br>ned hereto are true and correct copies as                 |
| 21 stated     |   |
| 22            |   |
| 23            |   |
| 24            |   |
| 25            |   |
| 26    ·<br>27 |   |
| 28            |   |
| -             | -30-  |
|               | DARRYL COTTON'S VERIFIED OPPOSITION TO MOTIONS TO COMPEL  |
|               | Α   |



# EXHIBIT



810

# EXHIBIT 2

.

I, Joe Hurtado, declare:

1

9

16

1. I am an individual residing in the County of San Diego and I have personal knowledge of
the facts stated below and, if called as a witness, I could and would testify.

2. Between late 2016 and early 2017, the following sequence of events took place: (i) Mr.
Darryl Cotton informed me that he sold his property to Mr. Larry Geraci; (ii) Mr. Cotton told me
that he expected Mr. Geraci would breach his agreement; (iii) Mr. Cotton asked that I help him
locate a new buyer for his property; (iv) I brokered a deal between Mr. Cotton and Mr. Richard
Martin for the sale of Mr. Cotton's property to Mr. Martin.

3. The day after the deal with Mr. Cotton and Mr. Martin was reached on March 21, 2017, Mr.
Geraci via his counsel, Mr. Michael Weinstein, initiated a lawsuit against Mr. Cotton seeking to
enforce a previous agreement between Mr. Cotton and himself (the "Geraci Litigation").

4. Materially, on March 6, 2017, I attended a local cannabis event at which Gina Austin was a
speaker. At that event, I introduced myself and, at Mr. Cotton's request, let her know that he would
not be attending and speaking with her.

5. Throughout the course of the Geraci Litigation, the following sequence of events took place: 17 (i) Mr. Cotton attempted to represent himself pro se in the Geraci Litigation; (ii) Mr. Cotton chose 18 to no longer represent himself in the Geraci Litigation and asked that I help him finance and 19 20 facilitate his legal representation; (iii) I identified Mr. David Demian and facilitated the full legal 21 representation of Mr. Cotton by Mr. Demian; (iv) Mr. Demian, I believe, failed to live up to his 22 professional obligations by, inter alia, (a) failing to discover and/or argue to the Court in the Geraci 23 Litigation the concept of promissory estoppel in response to Mr. Geraci's demurrer to Mr. Cotton's 24 Cross-Complaint; (b) failing to raise with the Court, at the oral hearing for a temporary restraining 25 order ("TRO") applied for by Mr. Cotton, evidence that is material and necessary for the Court's 26 proper adjudication of the issues before it; (c) when confronted by me, outside the courtroom 27 28

DECLARATION OF JOE HURTADO IN SUPPORT OF DARRYL COTTON'S OPPOSITION TO MOTIONS TO COMPEL

immediately after the TRO hearing, he acknowledged his failure to raise material arguments and
evidence in the moving papers, but denied that the fact that his failure to do so was reflective of any
wrongdoing; (d) not informing the Court of his failure to raise said arguments after the TRO
hearing; and (e) terminating his representation of Mr. Cotton by email before even speaking with
Mr. Cotton immediately after the oral hearing on the TRO.

6
6. I note that after the TRO hearing, I was approximately 5 feet away from Mr. Demian and the
7
8
9
9 say something along the lines of: "the moving papers were great" and that Mr. Demian "should
10

7. Summarily, I originally supported Mr. Cotton to protect my own financial interest and as an
 investment. However, for various reasons which are being put forth by Mr. Cotton, this litigation
 has become incredibly more expensive, time consuming and mentally and emotionally challenging
 than originally envisioned. And which is hard to describe in words.

15

27

28

8. Notably, the day after the Court declined Mr. Cotton's motion for reconsideration of his 16 application for a TRO, thereby confirming that Mr. Cotton was unlikely to prevail in the Geraci 17 Litigation, I informed him that I would be "cutting my losses" and would cease funding him 18 19 personally and the Geraci Litigation. This took place on December 13, 2017. Thereafter, on the 20 same day, Mr. Cotton came to where I was located uninvited and pleaded with me to continue my 21 support. I refused. Mr. Cotton physically assaulted me. I threatened to call the authorities and Mr. 22 Cotton just sat down and became, for lack of a better expression, neurotic (e.g., speaking to himself, 23 talking to others, being emotional, etc.) 24

9. Mr. Cotton was speaking and it appeared that he thought he was in the courtroom or at his
property on Federal Boulevard. His speech was nonsensical. Understanding his situation, I did not

DECLARATION OF JOE HURTADO IN SUPPORT OF DARRYL COTTON'S OPPOSITION TO MOTIONS TO COMPEL

call the police and instead called a medical doctor I had recently been introduced to, Dr. Candido, and explained the situation to her. 2

1

3

6

7

8

9

Joe Hurtado

23

24

25

26

27

28

10. Dr. Candido came to the location where Mr. Cotton was located and examined Mr. Cotton,

4 11. After diagnosing him, Dr. Candido recommended that we take Mr. Cotton to the Emergency 5 Room or call the authorities as she believed him to be a danger to himself and others.

12. I spoke with Dr. Candido and she agreed that so long as Mr. Cotton was not allowed to drive and he could stay at the residence with me under my supervision, it would not be necessary to call the authorities.

13. It is against my recommendation that Mr. Cotton is submitting his response to the Court on 10 11 the date hereof. I skimmed the very large document that appears to be over 1,000 pages that he 12 intends to file with the Court today and strongly recommended that he request additional time from 13 the Court, suggesting that to file such a document may actually be detrimental to him. However, 14 Mr. Cotton has stated his situation is even more dire than before and that he requires this action to 15 be speedily adjudicated, not just because of his dire financial situation, but for the well-being of his 16 mental and emotional state. 17

18 I declare under penalty of perjury under the laws of the State of California that the foregoing 19 is true and correct. 20 21 22

DECLARATION OF JOE HURTADO IN SUPPORT OF DARRYL COTTON'S OPPOSITION TO MOTIONS TO COMPEL

# EXHIBIT 3



3

| <ul> <li>I, Dr. Carolyn Candido, declare:</li> <li>I am a licensed physician in the State of California.</li> <li>On December 13, 2017, I was contacted by Mr. Joe Hurtado who requested I examined<br/>friend of his, Mr. Darryl Cotton, who was speaking incoherently. Mr. Hurtado stated I<br/>concerned that Mr. Cotton may require medical attention but that Mr. Cotton did not y</li> </ul> | ne was<br>vant to<br>fter |
|--|---------------------------|
| <ol> <li>I am a licensed physician in the State of California.</li> <li>On December 13, 2017, I was contacted by Mr. Joe Hurtado who requested I examine<br/>friend of his, Mr. Darryl Cotton, who was speaking incoherently. Mr. Hurtado stated I<br/>concerned that Mr. Cotton may require medical attention but that Mr. Cotton did not y</li> </ol>  | ne was<br>vant to<br>fter |
| <ul> <li>2. On December 13, 2017, I was contacted by Mr. Joe Hurtado who requested I examine</li> <li>friend of his, Mr. Darryl Cotton, who was speaking incoherently. Mr. Hurtado stated I</li> <li>concerned that Mr. Cotton may require medical attention but that Mr. Cotton did not was</li> </ul>  | ne was<br>vant to<br>fter |
| 5 concerned that Mr. Cotton may require medical attention but that Mr. Cotton did not v  | vant to<br>.fter          |
| 6  | fter                      |
| 6  |                           |
| go to the Emergency Room.  |                           |
| 7<br>3. I traveled to Mr. Hurtado's residence and met with Mr. Hurtado and Mr. Cotton.   |                           |
| 8<br>4. Mr. Cotton was in a room by himself and initially did not allow me to examine him. A   | ne to                     |
| approximately thirty minutes, Mr. Hurtado spoke with Mr. Cotton who then allowed r   |                           |
| 11 perform a physical examination.   |                           |
| 12 5. Mr. Cotton had an elevated pulse, was speaking incoherently and exhibited signs of a   | ixiety,                   |
| 13 panic and was expressing suicidal thoughts. His language vacillated from being clear  | .0                        |
| 14 incoherent. I am unclear as to what he was attempting to express, but from what I could   | d                         |
| <ul> <li>make out, he was in an emotional state due to matters related to some legal matter reg</li> <li>16</li> </ul>   | arding                    |
| his property.  |                           |
| 6. It is my diagnosis that he was suffering from Acute Stress Disorder and that at that mo   | ment                      |
| 19 in time represented a danger to himself and others. Because of his express statements   |                           |
| 20 regarding suicide and other expressions of violence as to unidentified third-parties, I   |                           |
| 21 repeatedly requested that Mr. Cotton go to the Emergency Room, which he refused.  |                           |
| <ul> <li>7. I communicated with Mr. Hurtado my diagnosis and expressed my concern for Mr. Co</li> </ul>  | otton                     |
| regarding his statements, to the extent that they were clear, as they reflected an intent  | .o                        |
| 25 harm himself and others. It was my recommendation that Mr. Cotton not be by himsel  | f,                        |
| 26 8. After speaking with Mr. Hurtado regarding Mr. Cotton, Mr. Hurtado promised to allo   | w Mr.                     |
| 27 Cotton to remain at that residence until such time as Mr. Cotton was calm.  |                           |
| 28   |                           |
| DECLARATION OF DR. CAROLYN CANDIDO IN SUPPORT OF DARRYL COTTON'S PETITION F<br>EMERGENCY WRIT OF SUPERSEDEAS AND WRIT OF MANDATE   | OR                        |

.

:

| 9. Since that evening I have not met   | or spoken with Mr. Cotton.                           |
|--|--|
| I declare under penalty of perjury une | der the laws of the State of California that the for |
| true and correct.                      |  |
| January 22, 2018                       | Chy Colati   |
|  | Dr. Carolyn Candido                                  |
|  |  |
|  | · ·  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  | ·  |
|  |  |

# EXHIBIT 4

### Exhibit A

Compilation of all email correspondence between Darryl Cotton and Larry Geraci

## Table of Contents

## Format: Sender; Receiver; Date; Time

.

.

| 1. Geraci. Cotton. 10-20-16. 11:42 AM. | A-1   |
|--|-------|
| 2. Geraci. Cotton. 10-24-16. 12:38 PM. | A-2   |
| 2.1 Attachment                         | A-2.1 |
| 3. Geraci. Cotton. 11-2-16. 3:11 PM.   | A-3   |
| 3.1 Attachment                         | A-3.1 |
| 4. Geraci. Cotton. 11-2-16. 9:13 PM.   | A-4   |
| 5. Geraci. Cotton. 11-14-16. 10:26 AM. | A-5   |
| 5.1 Attachment                         | A-5.1 |
| 6. Geraci. Cotton. 2-27-17. 8:49 AM.   | A-6   |
| 6.1 Attachment                         | A-6.1 |
| 7. Geraci. Cotton. 2-2-17. 8:51 AM.    | A-7   |
| 7.1 Attachment                         | A-7.1 |
| 8. Cotton. Geraci. 3-3-17. 8:22 AM.    | A-8   |
| 8.1 Attachment                         | A-8.1 |
| 9. Geraci. Cotton. 3-7-17. 12:05 PM.   | A-6   |
| 9.1 Attachment                         | A-9.1 |
| 10. Cotton. Geraci. 3-16-17. 8:23 PM.  | A-10  |
| 11. Cotton. Geraci. 3-17-17. 2:15 PM.  | A-11  |
| 12. Geraci. Cotton. 3-18-17. 1:43 PM.  | A-12  |
| 13. Cotton. Geraci. 3-19-17. 9:02 AM.  | A-13  |
| 14. Geraci. Cotton. 3-19-17. 3:11 PM.  | A-14  |

1

15. Cotton. Geraci. 3-19-17. 6:47 PM.A-1516. Cotton. Geraci. 3-21-17. 3:18 PM.A-16

1

ŧ

L

#### Subject: Automatic reply: test mail From: Larry Geraci <Larry@tfcsd.net> To: darryl@dalbercia.us Date: Thursday, October 20, 2016 10:42:49 AM GMT-08:00

#### Thank you for your email...

I will be out of the office until Wednesday, October 26th, 2016. If you should need immediate assistance, please contact Becky at: becky@tfcsd.net. You may also contact the office as well.

Thank you.

12

824

#### Subject: Drawing From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com> Date: Monday, October 24, 2016 11:38:28 AM GMT-08:00

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

#### Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and the transactions or matters it addresses. This email is considered a confidential communication and any of the transactions or matters it addresses. This email is our ostrory it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

From: darryl@dalbercia.us [mailto:darryl@dalbercia.us] On Behalf Of Darryl Cotton Sent: Monday, October 24, 2016 12:37 PM To: Larry Geraci <Larry@tfcsd.net> Subject: Test Send

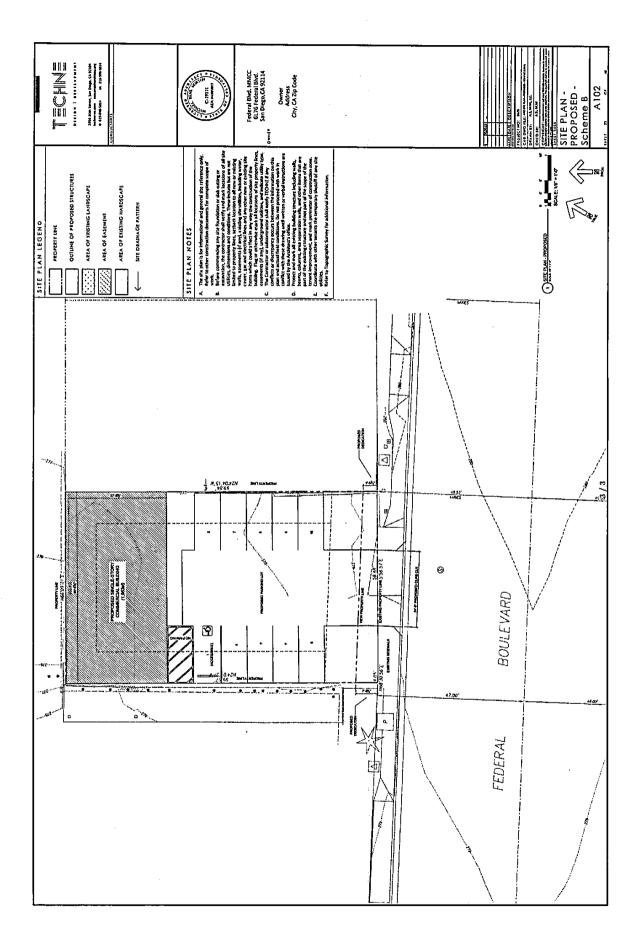
Darryl Cotton, President

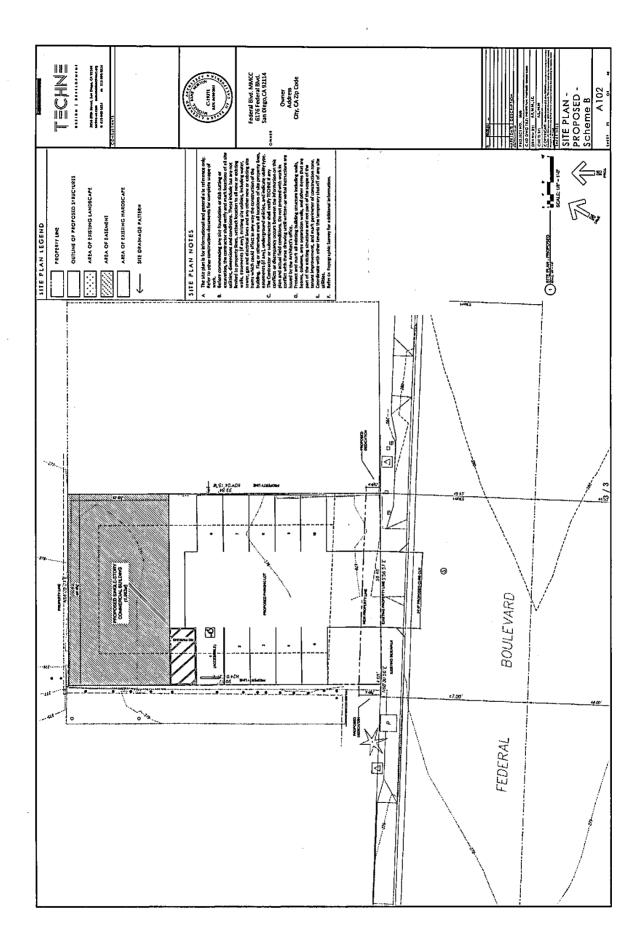


darryl@inda-gro.com www.inda-gro.com Ph: 877.452.2244 Cell: 619.954.4447 Skype: dc.dalbercia

6176 Federal Blvd. San Diego, CA. 92114 ---USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.





Subject: Agreement From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com> Date: Wednesday, November 2, 2016 2:11:51 PM GMT-08:00

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

#### Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, piease contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disciosure, copying, distribution or dissemination of the contents hereof is strictly prohibiled. Please notify the sender of this facsimile Immediately and arrange for the return or destruction of this facsimile and ell attachments.

829

#### 11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Lar#∕ Geracl

vl Cotton

2/4

| ACKNOWL   | EDGMENT   |
|---|---|
| A notary public or other officer completing this certificate verifies only the identity of the individ who signed the document to which this certifica attached, and not the truthfulness, accuracy, o validity of that document. | ate is  |
| State of California<br>County of <u>San Diezu</u> )   |   |
| On NOWEMBER 2, 2010 before me, _  | JESSICA NEWELL Notary Publi<br>(insert name and title of the officer)   |
|   | idence to be the person(s) whose name(s) is/are<br>edged to me that he/she/they executed the same in<br>v his/her/their signature(s) on the instrument the<br>person(s) acted, executed the instrument. |
| I certify under PENALTY OF PERJURY under th<br>paragraph is true and correct.   | e laws of the State of California that the foregoing  |
| WITNESS my hand and official seal.  | JESSICA NEWELL<br>Commission # 2002598<br>Notary Public - California<br>San Diego County<br>My Comm. Expires Jen 27, 2017   |
| Signature Jan Null  | (Seal)  |

...

-

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

art Geraci

rryl Cotton

| ACKNOWLEDGMENT   |
|--|
| A notary public or other officer completing this<br>certificate verifies only the identity of the individual<br>who signed the document to which this certificate is<br>attached, and not the truthfulness, accuracy, or<br>validity of that document.   |
| State of California<br>County of <u>San Diezu</u> )  |
| On November 2, 2010 before me, Jessica Newell Notary Public (insert name and title of the officer)   |
| personally appeared <u>DAVIVI</u> COHOM and LAVIV Gryan'<br>who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are<br>subscribed to the within instrument and acknowledged to me that he/she/they executed the same in<br>his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the<br>person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. |
| I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.   |
| WITNESS my hand and official seal.   |
| Signature for Null (Seal)  |

•

.

.

Subject: Re: Agreement From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com> Date: Wednesday, November 2, 2016 8:13:54 PM GMT-08:00

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <<u>darryl@inda-gro.com</u>> wrote:

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

Regards.

Darryl Cotton, President



darryl@inda-gro.com www.inda-gro.com Ph: 877.452.2244 Cell: 619.954.4447 Skype: dc.dalbercia

6176 Federal Blvd. San Diego, CA. 92114 USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the Intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify inda-Gro immediately by telephone at 619.266,4004.

On Wed, Nov 2, 2016 at 3:11 PM, Larry Geraci <Larry@tfcsd.net> wrote:

Best Regards,

#### Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com

Bus: <u>858.576.1040</u>

Fax: 858.630.3900

Circular 230 Disclaimer:

iRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalities; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (<u>SSB)576-1040</u> and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the Intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments. Subject: Federal Blvd need sig ASAP From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com> Date: Monday, November 14, 2016 10:26:09 AM GMT-08:00

Hi Darryl,

Can you sign and email back to me asap?

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

#### Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication and is intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile information of the return or destruction of this facsimile and ali attachments.

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

Signature

Date

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

....

Signature

Date

Subject: Federal Blvd Property From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com> Date: Monday, February 27, 2017 8:49:16 AM GMT-08:00

#### Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

#### Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disciosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

#### AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated \_\_\_\_\_, 2017, or its assignee ("Buyer").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. <u>DEFINITIONS</u>. For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property"**: That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. "Date of Agreement": The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. "Purchase Price": The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars (\$400,000.00).

d. "Due Diligence Period": The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. "Escrow Agent": The Escrow Agent is: [NAME]

f. "Title Company": The Title Company is: [NAME]

g. **"Title Approval Date"**: The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. "Closing", "Closing Date" and "Close of Escrow": These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. "Notices" will be sent as follows to:

Buyer:

6176 Federal Blvd. Trust 6176 Federal Blvd.

1

6176 Federal Blvd. Purchase Agreement

San Diego, California 92114 Attn: Fax No.: Phone No.:

with a copy to:

Seller:

Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110,

Darryl Cotton Address: City, State, Zip Attn: Fax No.: Phone No.:

Escrow Agent:

#### [NAME] [ADDRESS]

2. <u>PURCHASE AND SALE</u>. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "Improvements"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "Intangibles"). (Reference herein to the "Property" shall include the Real Property, Improvements, and Intangibles).

3. <u>PURCHASE PRICE AND PAYMENT; DEPOSIT</u>. The Purchase Price will be paid as follows:

a. <u>Deposit</u>. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. <u>Cash Balance</u>. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

#### 6176 Federal Blvd. Purchase Agreement

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

#### 4. <u>ESCROW</u>.

Execution of Form Escrow Instructions. Seller shall deposit this Agreement a. with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "Escrow") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. <u>Close of Escrow</u>. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. <u>Failure to Receive CUP</u>. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "**Buyer's Indemnity**" (as detailed in Section 8 below).

#### 5. <u>TITLE MATTERS</u>.

a. <u>Preliminary Title Report/Review of Title</u>. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "**Preliminary Title Report**"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

6176 Federal Blvd. Purchase Agreement

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. <u>Permitted Exceptions</u>. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("Mandatory Cure Items").

c. <u>Title Policy</u>. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. <u>Title and Survey Costs</u>. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

### 6176 Federal Blvd. Purchase Agreement

6. <u>SELLER'S DELIVERY OF SPECIFIED DOCUMENTS</u>. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("**Property Information**"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. <u>DUE DILIGENCE</u>. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

# 8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attomeys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attomeys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

## 6176 Federal Blvd. Purchase Agreement

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. <u>COVENANTS OF SELLER</u>. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

# 10. <u>REPRESENTATIONS OF SELLER</u>.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

## 6176 Federal Blvd. Purchase Agreement

### 7 / 27

845

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exists any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "Buyer's **Representatives**") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

7

6176 Federal Blvd. Purchase Agreement

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

# 11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. <u>DAMAGE</u>. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

8

6176 Federal Blvd. Purchase Agreement

rnay, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to rnake such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. <u>CONDEMNATION</u>. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to rnonies relating to Sellers loss of income prior to closing.

# 14. <u>CLOSING</u>

ł

a. <u>Closing Date</u>. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. <u>Seller's Deliveries in Escrow</u>. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

### 6176 Federal Blvd. Purchase Agreement

(13) <u>Deed</u>. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "Deed").

(14) <u>Assignment of Intangible Property</u>. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) <u>Assignment and Assumption of Contracts</u>. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) <u>FIRPTA</u>. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) <u>Additional Documents</u>. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. <u>Buyer's Deliveries in Escrow</u>. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) <u>Purchase Price</u>. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) <u>Assumption of Intangible Property</u>. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) <u>Authority</u>. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) <u>Additional Documents</u>. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. <u>Closing Statements</u>. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

### 6176 Federal Blvd. Purchase Agreement

e. <u>Title Policy</u>. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. <u>Possession</u>. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. <u>Transfer of Title</u>. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

# 15. <u>COSTS, EXPENSES AND PRORATIONS.</u>

ţ

- a. <u>Seller Will Pay</u>. At the Closing, Seller shall be charged the following:
  - (1) All premiums for an ALTA Standard Coverage Title Policy;
  - (2) One-half of all escrow fees and costs;
  - (3) Seller's share of prorations; and
  - (4) One-half of all transfer taxes.
- b. <u>Buyer Will Pay</u>. At the Closing, Buyer shall pay:
  - (1) All document recording charges;
  - (2) One-half of all escrow fees and costs;
  - (3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;
  - (4) One-half of all transfer taxes; and
  - (5) Buyer's share of prorations.
- c. <u>Prorations</u>.

(1) <u>Taxes</u>. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

11

6176 Federal Blvd. Purchase Agreement

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) <u>Utilities</u>. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. <u>CLOSING DELIVERIES</u>.

a. <u>Disbursements And Other Actions by Escrow Agent</u>. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) <u>Funds</u>. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) <u>Recording</u>. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed <u>after</u> recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

Buyer.

(3) <u>Title Policy</u>. Direct the Title Company to issue the Title Policy to

(4) <u>Delivery of Documents to Buyer or Seller</u>. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. <u>Seller's Default</u>. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

### 6176 Federal Blvd. Purchase Agreement

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

## Seller's Initials Buyer's Initials

c. <u>Escrow Cancellation Following a Termination Notice</u>. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. <u>Other Expenses</u>. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "Escrow Cancellation Charges"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

I8. <u>MISCELLANEOUS</u>.

a. <u>Entire Agreement</u>. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. <u>Time</u>. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

13

6176 Federal Blvd. Purchase Agreement

c. <u>Attorneys' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Confidentiality and Return of Documents. Buyer and Seller shall each f. maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

14

### 6176 Federal Blvd. Purchase Agreement

h. <u>Amendments</u>. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. <u>Drafts Not an Offer to Enter Into a Legally Binding Contract</u>. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. <u>No Third Party Beneficiary</u>. The provisions of this Agreement are not intended to benefit any third parties.

l. <u>Survival</u>. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. <u>Invalidity and Waiver</u>. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by ovemight delivery using a nationally recognized ovemight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

15

6176 Federal Blvd. Purchase Agreement

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

Procedure for Indemnity. The following provisions govern actions for q. indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. <u>Execution in Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. <u>Section 1031 Exchange</u>. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

16

6176 Federal Blvd. Purchase Agreement

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. <u>Incorporation of Recitals/Exhibits</u>. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. <u>Partial Invalidity</u>. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. <u>Waiver of Covenants, Conditions or Remedies</u>. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. <u>Legal Advice</u>. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. <u>Memorandum of Agreement</u>. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

## SIGNATURE PAGE FOLLOWS

17

6176 Federal Blvd. Purchase Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

**BUYER:** 

# SELLER:

6176 FEDERAL BLVD TRUST

DARRYL COTTON.

.

By:

Printed:

Its: Trustee

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: \_\_\_\_\_, 2017

By:

Escrow Officer

18 6176 Federal Blvd. Purchase Agreement

# EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY (to be provided by the Title Company)

> 19 6176 Federal Blvd. Furchase Agreement

20 6176 Federal Blvd. Purchase Agreement i. ÷

.

,

.

21 / 27

ż.

# EXHIBIT "B"

# PROPERTY INFORMATION

21 6176 Federal Blvd. Purchase Agreement

.

22 / 27

860

22 6176 Federal Blvd. Purchase Agreement

•

.

.

.

# EXHIBIT "C"

# SERVICE CONTRACTS

23 6176 Federal Blvd. Purchase Agreement

•

•

٠

# EXHIBIT "D"

.

.

# THREATENED OR PENDING LAWSUITS

24 6176 Federal Blvd. Furchase Agreement

# EXHIBIT "E"

.

.

.

# MEMORANDUM OF AGREEMENT

25 6176 Federal Blvd. Purchase Agreement

# 

. . . .

.

26 6176 Federal Blvd. Purchase Agreement

# AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated \_\_\_\_\_, 2017, or its assignee ("Buyer").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. <u>DEFINITIONS</u>. For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property"**: That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. "Date of Agreement": The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. "Purchase Price": The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars (\$400,000.00).

d. **"Due Diligence Period"**: The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. "Escrow Agent": The Escrow Agent is: [NAME]

f. "Title Company": The Title Company is: [NAME]

g. **"Title Approval Date"**: The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. "Closing", "Closing Date" and "Close of Escrow": These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. "Notices" will be sent as follows to:

Buyer:

6176 Federal Blvd. Trust 6176 Federal Blvd.

1

6176 Federal Blvd. Purchase Agreement

San Diego, California 92114 Attn: Fax No.: Phone No.:

with a copy to:

Seller:

Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110,

Darryl Cotton Address: City, State, Zip Attn: Fax No.: Phone No.:

Escrow Agent:

[NAME] [ADDRESS]

2. <u>PURCHASE AND SALE</u>. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "Improvements"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "Intangibles"). (Reference herein to the "Property" shall include the Real Property, Improvements, and Intangibles).

3. <u>PURCHASE PRICE AND PAYMENT; DEPOSIT</u>. The Purchase Price will be paid as follows:

a. <u>Deposit</u>. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. <u>Cash Balance</u>. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

2

6176 Federal Blvd. Purchase Agreement

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

### 4. <u>ESCROW</u>.

Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "Escrow") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. <u>Close of Escrow</u>. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. <u>Failure to Receive CUP</u>. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "**Buyer's Indemnity**" (as detailed in Section 8 below).

# 5. <u>TITLE MATTERS</u>.

a. <u>Preliminary Title Report/Review of Title</u>. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "**Preliminary Title Report**"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

3

6176 Federal Blvd, Purchase Agreement

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. <u>Permitted Exceptions</u>. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("Mandatory Cure Items").

c. <u>Title Policy</u>. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. <u>Title and Survey Costs</u>. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

4

6176 Federal Blvd. Purchase Agreement

6. <u>SELLER'S DELIVERY OF SPECIFIED DOCUMENTS</u>. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("**Property Information**"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. <u>DUE DILIGENCE</u>. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "**Due Diligence Termination Notice**") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

# 8. <u>PHYSICAL INSPECTION; BUYERS INDEMNITIES.</u>

Buyer shall have the right, upon reasonable notice and during regular a. business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

### 6176 Federal Blvd. Purchase Agreement

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. <u>COVENANTS OF SELLER</u>. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

# 10. <u>REPRESENTATIONS OF SELLER</u>.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

## 6176 Federal Blvd. Purrhase Agreement

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated ).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exists any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "Buyer's **Representatives**") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

7

6176 Federal Blvd. Purchase Agreement

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

# 11. <u>REPRESENTATIONS AND WARRANTIES BY BUYER.</u>

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. <u>DAMAGE</u>. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

8

6176 Federal Blvd. Purchase Agreement

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. <u>CONDEMNATION</u>. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Sellers loss of income prior to closing.

# 14. <u>CLOSING</u>

a. <u>Closing Date</u>. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. <u>Seller's Deliveries in Escrow</u>. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

### 6176 Federal Blvd. Purchase Agreement

(13) <u>Deed</u>. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "Deed").

(14) <u>Assignment of Intangible Property</u>. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) <u>Assignment and Assumption of Contracts</u>. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) <u>FIRPTA</u>. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) <u>Additional Documents</u>. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. <u>Buyer's Deliveries in Escrow</u>. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) <u>Purchase Price</u>. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) <u>Assumption of Intangible Property</u>. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) <u>Authority</u>. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) <u>Additional Documents</u>. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. <u>Closing Statements</u>. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

10 6176 Federal Blvd. Purchase Agreement

e. <u>Title Policy</u>. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. <u>Possession</u>. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. <u>Transfer of Title</u>. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

# 15. <u>COSTS, EXPENSES AND PRORATIONS</u>.

- a. <u>Seller Will Pay</u>. At the Closing, Seller shall be charged the following:
  - (1) All premiums for an ALTA Standard Coverage Title Policy;
  - (2) One-half of all escrow fees and costs;
  - (3) Seller's share of prorations; and
  - (4) One-half of all transfer taxes.
- b. <u>Buyer Will Pay</u>. At the Closing, Buyer shall pay:
  - (1) All document recording charges;
  - (2) One-half of all escrow fees and costs;
  - (3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;
  - (4) One-half of all transfer taxes; and
  - (5) Buyer's share of prorations.
- c. <u>Prorations</u>.

(1) <u>Taxes</u>. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

11

6176 Federal Blvd. Purchase Agreement

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) <u>Utilities</u>. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

## 16. CLOSING DELIVERIES.

a. <u>Disbursements And Other Actions by Escrow Agent</u>. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) <u>Funds</u>. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) <u>Recording</u>. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed <u>after</u> recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

Buyer.

(3) <u>Title Policy</u>. Direct the Title Company to issue the Title Policy to

(4) <u>Delivery of Documents to Buyer or Seller</u>. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

### 17. DEFAULT AND REMEDIES

a. <u>Seller's Default</u>. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

### 6176 Federal Blvd. Purchase Agreement

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

# Seller's Initials Buyer's Initials

c. <u>Escrow Cancellation Following a Termination Notice</u>. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. <u>Other Expenses</u>. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "Escrow Cancellation Charges"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

## 18. <u>MISCELLANEOUS</u>.

a. <u>Entire Agreement</u>. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. <u>Time</u>. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

13

### 6176 Federal Blvd. Purchase Agreement

c. <u>Attorneys' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. <u>Interpretation of Agreement</u>. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

14

#### 6176 Federal Blvd. Purchase Agreement

h. <u>Amendments</u>. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. <u>Drafts Not an Offer to Enter Into a Legally Binding Contract</u>. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. <u>No Third Party Beneficiary</u>. The provisions of this Agreement are not intended to benefit any third parties.

l. <u>Survival</u>. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. <u>Invalidity and Waiver</u>. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

15

6176 Federal Blvd. Purchase Agreement

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. <u>Execution in Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. <u>Section 1031 Exchange</u>. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

16

6176 Federal Blvd. Purchase Agreement

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. <u>Incorporation of Recitals/Exhibits</u>. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. <u>Partial Invalidity</u>. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. <u>Waiver of Covenants, Conditions or Remedies</u>. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. <u>Legal Advice</u>. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. <u>Memorandum of Agreement</u>. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

### SIGNATURE PAGE FOLLOWS

17

## 6176 Federal Blvd. Furchase Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

**BUYER**:

SELLER:

6176 FEDERAL BLVD TRUST

DARRYL COTTON.

By:

Printed: \_\_\_\_\_

Its: Trustee

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: \_\_\_\_\_, 2017

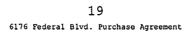
By:

Escrow Officer

18 6176 Federal Blvd. Purchase Agreement

# EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY (to be provided by the Title Company)



et.

20 6176 Federal Blvd. Purchase Agreement

.

.

•

# EXHIBIT "B"

## **PROPERTY INFORMATION**

21 6176 Federal Blvd. Purchase Agreement

22 6176 Federal Blvd. Purchase Agreement

# EXHIBIT "C"

# SERVICE CONTRACTS

## 23 6176 Federal Blvd. Purchase Agreement

## EXHIBIT "D"

# THREATENED OR PENDING LAWSUITS

24 6176 Federal Blvd. Furchase Agreement

# EXHIBIT "E"

## MEMORANDUM OF AGREEMENT

25 6176 Federal Blvd. Purchase Agreement

26 6176 Federal Blvd. Purchase Agreement

Subject: Statement From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com> Date: Thursday, March 2, 2017 8:51:11 AM GMT-08:00

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

#### Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other eccompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication and us intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facs/mile inmediately and arrange for the return or destruction of this facs/mile and all attachments.

892

## SIDE AGREEMENT

Dated as of March \_\_\_\_, 2017

## By and Among

## DARRYL COTTON

#### and

## 6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_\_ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

### RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars (\$400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

## ARTICLE I

### 1. Terms of the Side Agreement

I

1.1. Buyer shall pay Four Hundred Thousand Dollars (\$400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

1

6176 Federal Blvd. Side Agreement

## ARTICLE II

### 2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

#### ARTICLE III

## 3. General Provisions

3.1. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. <u>Time</u>. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. <u>Wire Instructions</u>. Buyer shall transmit Payment Price via wire transfer to the following account: \_\_\_\_\_\_, with the routing number or swift code of: \_\_\_\_\_\_, located at the following bank and address: \_\_\_\_\_\_.

3.4. <u>Attorneys' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2

#### 6176 Federal Blvd. Side Agreement

3.6. <u>Governing Law</u>. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attomeys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. <u>Amendments</u>. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. <u>Drafts Not an Offer to Enter Into a Legally Binding Contract</u>. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3

6176 Federal Blvd. Side Agreement

3.11. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. <u>No Third Party Beneficiary</u>. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. <u>Invalidity and Waiver</u>. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust 6176 Federal Blvd. San Diego, California 92114 Attn: Fax No.: Phone No.:

with a copy to:

Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110

IF TO SELLER:

Darryl Cotton Address: City, State, Zip: Attn: Fax No.: Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

4

6176 Federal Blvd. Side Agreement

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. <u>Execution in Counterparts</u>. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. <u>Incorporation of Recitals/Exhibits</u>. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. <u>Legal Advice</u>. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

5

6176 Federal Blvd. Side Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

**BUYER:** 

6176 FEDERAL BLVD. TRUST

Ву:\_\_\_\_

Printed:

Its: Trustee

SELLER:

DARRYL COTTON:

6

6176 Federal Blvd. Side Agreement

## SIDE AGREEMENT

Dated as of March , 2017

#### By and Among

## DARRYL COTTON

#### and

## 6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

## RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars (\$400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

## ARTICLE I

## 1. Terms of the Side Agreement

1.1. Buyer shall pay Four Hundred Thousand Dollars (\$400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

1

#### 6176 Federal Blvd. Side Agreement

## ARTICLE II

### 2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

## **ARTICLE III**

#### 3. General Provisions

2

3.1. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. <u>Time</u>. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. <u>Wire Instructions</u>. Buyer shall transmit Payment Price via wire transfer to the following account: \_\_\_\_\_\_, with the routing number or swift code of: \_\_\_\_\_\_, located at the following bank and address:

3.4. <u>Attorneys' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

6176 Federal Blvd. Side Agreement

3.6. <u>Governing Law</u>. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

Confidentiality and Return of Documents. Buyer and Seller shall each maintain as 3.7. confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. <u>Amendments</u>. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. <u>Drafts Not an Offer to Enter Into a Legally Binding Contract</u>. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

6176 Federal Blvd. Side Agreement

3

3.11. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. <u>No Third Party Beneficiary</u>. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. <u>Invalidity and Waiver</u>. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust 6176 Federal Blvd. San Diego, California 92114 Attn: Fax No.: Phone No.:

with a copy to:

Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110

IF TO SELLER:

Darryl Cotton Address: City, State, Zip: Attn: Fax No.: Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

4

6176 Federal Blvd. Side Agreement

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. <u>Execution in Counterparts</u>. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. <u>Incorporation of Recitals/Exhibits</u>. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. <u>Waiver of Covenants, Conditions or Remedies</u>. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. <u>Legal Advice</u>. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

5

6176 Federal Blvd. Side Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

SELLER:

DARRYL COTTON:

1

## **BUYER:**

# 6176 FEDERAL BLVD. TRUST

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

Printed: \_\_\_\_\_

Its: Trustee

6

6176 Federal Blvd. Side Agreement

904

Subject: Re: Statement From: Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Date: Friday, March 3, 2017 8:22:09 AM GMT-08:00

### Larry,

I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position as per my Inda-Gro GERL Service Agreement (see attached) in the new store. In fact para 3.11 looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?

On Thu, Mar 2, 2017 at 8:51 AM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: <u>858.630.3900</u>

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penatities; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or dastroy it

Immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

.

.

.

,



## SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments 5402 Ruffin Road, Ste. 200 San Diego, CA 92103

Attn: Mr. Larry Geraci Ph: 858.956.4040 E-mail: Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

- The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for \$400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.
- 2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.
  - 3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.
  - 4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of \$400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro \$200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, \$200,000.00 would become payable and due.
  - 5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

Inda-Gro 6176 Federal Blvd., San Diego, CA 92114-1401 Toll Free: 877.452.2244 <sup>3/4</sup> Local: 619.266.4004 www.inda-gro.com



GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

## TOTAL PRICE: Four Hundred Thousand and 00/100 (\$ 400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

| Sign: _ |                          | Print Name: | Date: |
|---------|--------------------------|-------------|-------|
|         | Darryl Cotton, President |             |       |
| Sign: _ |                          | Print Name: | Date: |
|         | Larry Geraci             | · · ·       |       |
|         |                          |             |       |

Inda-Gro 6176 Federal Bivd., San Diego, CA 92114-1401 Toll Free: 877.452.2244 <sup>4/4</sup> Local: 619.266.4004 www.inda-gro.com



## SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments 5402 Ruffin Road, Ste. 200 San Diego, CA 92103

Attn:Mr. Larry GeraciPh:858.956.4040E-mail:Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

- The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for \$400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.
- 2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.
- 3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.
- 4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of \$400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro \$200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, \$200,000.00 would become payable and due.
- 5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

inda-Gro 6176 Federal Blvd., San Diego, CA 92114-1401 Toll Free: 877.452.2244 <sup>3/4</sup> Local: 619.266.4004 www.inda-gro.com



GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

## TOTAL PRICE: Four Hundred Thousand and 00/100 (\$ 400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

| Sign: |                          | Print Name: | _Date: |
|-------|--------------------------|-------------|--------|
|       | Darryl Cotton, President |             |        |
|       |                          |             |        |
| Sign: |                          | Print Name: | _Date: |
|       | Larry Geraci             |             |        |

Inda-Gro 6176 Federal Blvd., San Diego, CA 92114-1401 Toll Free: 877.452.2244 <sup>4/4</sup> Local: 619.266.4004 www.inda-gro.com Subject: Contract Review From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <darryl@inda-gro.com> Date: Tuesday, March 7, 2017 12:05:43 PM GMT-08:00

## Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

#### Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication and is intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

#### SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_\_ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated \_\_\_\_\_\_, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

### RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller \$400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

### ARTICLE I SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars (\$400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the  $10^{th}$  day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than \$5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and \$10,000.00 a month for each month thereafter the Business is operating on the Property.

1

6176 Federal Blvd. Side Agreement

### ARTICLE II GENERAL TERMS

2. <u>Entire Agreement</u>. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. <u>Time</u>. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. <u>Termination</u>. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. <u>Attorneys' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attomeys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. <u>Governing Law</u>. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. <u>Confidentiality and Return of Documents</u>. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. <u>Amendments</u>. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2

#### 6176 Federal Blvd. Side Agreement

2.10. <u>No Third Party Beneficiary</u>. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. <u>Invalidity and Waiver</u>. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust Address: City, State, Zip: Attn: Fax No.: Phone No.:

with a copy to:

Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110

IF TO SELLER:

Darryl Cotton Address: City, State, Zip: Attn: Fax No.: Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

3

6176 Federal Blvd. Side Agreement

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. <u>Execution in Counterparts</u>. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. Incorporation of Recitals/Exhibits. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

## **BUYER: SELLER:**

## 6176 FEDERAL BLVD. TRUST

## **DARRYL COTTON:**

By:

Printed:

Its: Trustee

4

6176 Federal Blvd. Side Agreement

#### SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated \_\_\_\_\_\_, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

## RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller \$400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

#### ARTICLE I SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars (\$400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the 10<sup>th</sup> day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than \$5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and \$10,000.00 a month for each month thereafter the Business is operating on the Property.

1

6176 Federal Blvd. Side Agreement

### ARTICLE II GENERAL TERMS

2. <u>Entire Agreement</u>. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. <u>Termination</u>. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. <u>Attorneys' Fees</u>. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. <u>Assignment</u>. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. <u>Governing Law</u>. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. <u>Confidentiality and Return of Documents</u>. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. <u>Amendments</u>. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. <u>No Partnership</u>. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2

6176 Federal Blvd. Side Agreement

2.10. <u>No Third Party Beneficiary</u>. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. <u>Invalidity and Waiver</u>. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust Address: City, State, Zip: Attn: Fax No.: Phone No.:

with a copy to:

Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110

IF TO SELLER:

Darryl Cotton Address: City, State, Zip: Attn: Fax No.: Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. <u>Calculation of Time Periods</u>. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

3

6176 Federal Blvd. Side Agreement

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. <u>Brokers</u>. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. <u>Further Assurances</u>. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. <u>Execution in Counterparts</u>. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. <u>Incorporation of Recitals/Exhibits</u>. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

## **BUYER: SELLER:**

#### 6176 FEDERAL BLVD. TRUST

## DARRYL COTTON:

Ву:\_\_\_\_\_

Printed:

Its: Trustee

6176 Federal Blvd. Side Agreement

Subject: Re: Contract Review From: Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Date: Thursday, March 16, 2017 8:23:52 PM GMT-07:00

## Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but

basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."

- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com Bus: <u>858.576.1040</u> Fax: <u>858.630.3900</u>

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters It addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (<u>858)576-1040</u> and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and ell attachments.

Subject: Re: Contract Review From: Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Date: Friday, March 17, 2017 2:15:50 PM GMT-07:00

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <<u>indagrodarryl@gmail.com</u>> wrote: | Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services

agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to

continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com

Bus: <u>858.576.1040</u>

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at <u>(858)576-1040</u> and return this to us or destroy it immediately. If you ere in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

.

.

## Subject: RE: Contract Review From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <indagrodarryl@gmail.com> Date: Saturday, March 18, 2017 1:43:23 PM GMT-07:00

## Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

#### Circular 230 Disclaimer:

From: Darryl Cotton [mailto:indagrodarryl@gmail.com] Sent: Friday, March 17, 2017 2:16 PM To: Larry Geraci <Larry@tfcsd.net> Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax edvice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication and was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and Is intended for the person or firm identified above. If you have received this in error, please contact us at (358)576-1040 and return this to us or destroy it immediately; if you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton < indagrodarryl@gmail.com > wrote:

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review

the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com Bus: <u>858.576.1040</u> Fax: <u>858.630.3900</u>

#### Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

930

Subject: Re: Contract Review From: Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Date: Sunday, March 19, 2017 9:02:18 AM GMT-07:00

## Larry,

I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.

On Sat, Mar 18, 2017 at 1:43 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

Táx & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com

## Bus: <u>858.576.1040</u>

Fax: <u>858.630.3900</u>

#### Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or malters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (<u>858)578-1040</u> and return this to us or destro; us or destro; you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile and all attachments.

From: Darryl Cotton [mailto:<u>indagrodarryl@gmail.com]</u> Sent: Friday, March 17, 2017 2:16 PM To: Larry Geraci <<u>Larry@tfcsd.net</u>> Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <<u>indagrodarryl@gmail.com</u>> wrote:

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming

from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I

had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penallies; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (<u>858)576-1040</u> and return this to us or destroy it immediately. If you are in other intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution er dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments. Subject: RE: Contract Review From: Larry Geraci <Larry@tfcsd.net> To: Darryl Cotton <indagrodarryl@gmail.com> Date: Sunday, March 19, 2017 3:11:22 PM GMT-07:00

#### Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

# As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire process.

To: 'Abhay Schweitzer' <<u>abhay@techne-us.com</u>> Subject: PTS 520606 - Federal Boulevard MMCC Importance: High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application. Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded. Please notify me at your earliest convenience of your preference. Regards,

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: 858.576.1040** Fax: 858.630.3900

Circular 230 Discialmer;

From: Darryl Cotton [mailto:indagrodarryl@gmail.com] Sent: Sunday, March 19, 2017 9:02 AM

IRS regulations require us to advise you that, unlass otherwise spacifically noted, any faderal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penatiles; furthermore, this communication was not intended or written to support the promotion or markeling of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have roceived this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contants hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

#### To: Larry Geraci <Larry@tfcsd.net> Subject: Re: Contract Review

Larry,

I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.

On Sat, Mar 18, 2017 at 1:43 PM, Larry Geraci <Larry@tfcsd.net> wrote:

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com **Bus: <u>858.576.1040</u>** Fax: <u>858.630.3900</u>

Circular 230 Disclaimer:

From: Darryl Cotton [mailto:<u>indagrodarryl@gmail.com]</u> Sent: Friday, March 17, 2017 2:16 PM To: Larry Geraci <<u>Larry@tfcsd.net</u>> Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidantial communication and is intended for the person or firm identified above. If you have received this in error, please contact us at <u>(858)576-1040</u> and return this to us or destroy in mediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton < indagrodarryl@gmail.com > wrote:

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com Bus: <u>858.576.1040</u> Fax: <u>858.630.3900</u>

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at <u>(856)576-1040</u> and ratum this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile and all attachments. Subject: Re: Contract Review From: Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Date: Sunday, March 19, 2017 6:47:43 PM GMT-07:00

#### Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.

On Sun, Mar 19, 2017 at 3:11 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire process.

To: 'Abhay Schweitzer' <<u>abhay@techne-us.com</u>> Subject: PTS 520606 - Federal Boulevard MMCC Importance: High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,

## Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

iRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication was not intended for the person or firm identified above. If you have received this in error, please contact us at <u>(858)576-1040</u> and return this to us or destroy it immediately; if you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

From: Darryl Cotton [mailto:<u>indagrodarryl@gmail.com]</u> Sent: Sunday, March 19, 2017 9:02 AM

To: Larry Geraci <<u>Larry@tfcsd.net</u>> Subject: Re: Contract Review

Larry,

I understand that drafting the agreements will take time, but you don't need to consult with

your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.

On Sat, Mar 18, 2017 at 1:43 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: <u>858.630.3900</u>

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at <u>(BSB)76-1040</u> and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

From: Darryl Cotton [mailto:<u>indagrodarryl@gmail.com</u>] Sent: Friday, March 17, 2017 2:16 PM To: Larry Geraci <<u>Larry@tfcsd.net</u>> Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <<u>indagrodarryl@gmail.com</u>> wrote:

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2

and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost

reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the parson or firm identified above. If you have received this in error, please contact us at <u>(858)576-1040</u> and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hareof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments. Subject: Re: Contract Review From: Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net> Date: Tuesday, March 21, 2017 3:18:36 PM GMT-07:00

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete' phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

On Sun, Mar 19, 2017 at 6:47 PM, Darryl Cotton <<u>indagrodarryl@gmail.com</u>> wrote: | Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.

On Sun, Mar 19, 2017 at 3:11 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire

process.

## To: 'Abhay Schweitzer' <<u>abhay@techne-us.com</u>> Subject: PTS 520606 - Federal Boulevard MMCC Importance: High

#### Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com

Bus: <u>858.576.1040</u> Fax: <u>858.630.3900</u> Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us et <u>(858)576-1040</u> and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthofized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

From: Darryl Cotton [mailto:indagrodarry!@gmail.com] Sent: Sunday, March 19, 2017 9:02 AM

To: Larry Geraci <<u>Larry@tfcsd.net</u>> Subject: Re: Contract Review

Larry,

I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.

On Sat, Mar 18, 2017 at 1:43 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123* 

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at <u>(858)</u>576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile and all attachments.

From: Darryl Cotton [mailto:<u>indagrodarryl@gmail.com]</u> Sent: Friday, March 17, 2017 2:16 PM To: Larry Geraci <<u>Larry@tfcsd.net</u>> Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final

written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <<u>indagrodarryl@gmail.com</u>> wrote:

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <<u>Larry@tfcsd.net</u>> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc 5402 Ruffin Rd, Ste 200 San Diego, Ca 92123

Web: Larrygeraci.com

Bus: <u>858.576.1040</u>

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication end is intended for the person or firm identified above. If you have received this in error, please contact us at (<u>1658)576-1040</u> and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

# EXHBIT 5

Ŧ

|      | CALIFORNIA COMMERCIAL PROPERTY PURCHASE AGREEMENT   |
|------|---|
|      | ASSOCIATION AND JOINT ESCROW INSTRUCTIONS   |
| Y    | OF REALTORS (NON RESIDENTIAL)<br>(C.A.R. Form CPA, Revised 12/15)   |
|      | répáréd; <u>03/21/2017</u><br>FER:  |
|      |   |
|      | (Xindvidualis) A Composition A Partnership (An LLC An LLC |
| 5    | THE REAL PROPERTY to be activited in  |
| (    | (HE PUKCHASE PRICE DEPINDIS TWO MINION  |
|      | Dollars 5 2 000 000 00  |
|      | CLOSE OF ESCROW shall occur on [X] see Addendum 1 (date) (cr Days After Acceptance).<br>Buyer and Sciler are referred to herein as the "Parties" Brokers are not Parties to this Agreement.   |
| 2. 1 | SENCY:  |
|      | DISCLOSURE: The Parties each acknowledge receipt of a 💢 Disclosure Regarding Real Estate Agency Relationships' (C.A.R. Form AD)   |
| I    | CONFIRMATION: The following agency relationships are thereby confirmed for this transaction   |
|      | Listing Agent (Print Firm Name) is the agent of (check one)   |
| •    | Lithe Seller exclusively; or both the Buyer and Seller.   |
|      | Setting Agent (Print Firm Name) (c) not the same as the Listing Agent) is the agent of (check one); the Buyer exclusively; or the Sever exclusively, or both the Buyer and Settin   |
|      | POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each admowledge receipt of a X Possible Representation  |
|      | of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS)   |
| З,   | NANCE TERMS: Buyer represents that hunds will be good when deposited with Escrow Holder.  |
|      | (1) Buyer, Direct Deposit shall be in the amount of (1) Buyer, Direct Deposit Buyer shall deliver deposit directly to Escrow Holder by electronic funds   |
|      | itansfer, Cashier's check, Cersonal check, Cother viting within 3 business days   |
|      | after free shaded for   |
|      | R (2) Buyer Deposit with Agent: Buyer has given the deposit by personal check (or)  |
|      | to the agent submitting the offer (or to), made payable to), made payable to). The deposit shall be held uncashed until Acceptance and then deposited   |
|      | with Escrow Holder within 3 business days after Acceptance (or)   |
|      | with Escrew Holder within 3 business days after Acceptance (or)<br>Deposit enecks given to agent shall be an original signed check and not a copy   |
|      | lete: In tal and increased deposit checks received by agent shall be recorded in Broker's trust fund log.)<br>. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of S   |
|      | within Days After Acceptance (or).  |
|      | within Days After Acceptance (or).<br>If the Parses agree to injudated damages at this Agreement, they also agree to incorporate the increased  |
|      | deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form<br>RD) at the time the increased deposit is delivered to Escrow Holder.   |
|      | A ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer   |
|      | obtaision a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer  |
|      | or Buyer shall, within 3 (or) Days After Acceptance, Deliver to Seller such verification.   |
|      | LOAN(S):<br>(1) FIRST LOAN: in the amount of  |
|      | This loss will be conventional financing or [Seller financing (CAR, Form SFA), Lassumed   |
|      | Connelling (CAR) Form AEA) ( ) subject to financial ( ) GIDE:   |
|      | loan shall be at a fixed rate not to exceed% or an edjustable rate loan with initial rate not to exceed% of   |
|      | the loan amount.  |
|      | (3) SECONDION in the amount of  |
|      | This ban will be conventional financing or Setter financing (C.A.R. Form SFA), assumed financing<br>This ban will be conventional financing or Setter financing (C.A.R. Form SFA), assumed financing  |
|      | (C.A.R. Form AFA), []subject to financing, [] Other, This loan shall be at a fixed rate not to exceed%, or [] an adjustable rate loan with initial rate not to exceed%.   |
|      | Recardless of the type of loan, Buyer shall pay points not to exceed to blue to built and the   |
|      | ADDITIONAL FINANCING TERMS: see attached Addendum 1   |
|      | F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of   |
|      | to be deposited with Escrow Holder pursuant to Escrew Holder instructions.  |
|      | C. PURCHASE PRICE (TOTAL):<br>H. VEREICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or Ican broker pursuant to partigraph 21(1)<br>H. VEREICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or Ican broker pursuant to partigraph 21(1)  |
|      | shall within 3 (or ) Days After Acceptance Deliver to easier without returned ( )   |
|      | (TVerification attached.)   |
| 8    | er's Initialia (X ) ( ) ( ) ( ) ( ) ( ) ( ) ( ) ( ) (   |
| 0    | REVISED 12/15 (PAGE 1 OF 1)) COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 1 OF 11)  |

.

### Property Address: 6176 Federal Blvd, San Diogo, CA 92114-1401

### Date: March 21, 2017

মানু সময়

I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or This NOT) contingent upon a written approisal of the Property by a licensed or certified appraiser at no loss than the purchase price. Buyer shall, as specified in paragraph 14B(3), In writing, remove the appraisal contingency or cancel this Agreement within 17 (or \_\_\_\_\_\_) Days After Acceptance. LOAN TERMS:

(1) LOAN APPLICATIONS; Within 3 (or ) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lander or toon troker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is on adjustable rate lean, the prequalification cr preapproval letter shall be based on the qualitying rate, not the initial loan rate. ( IX Letter attached )

(2) LOAN CONTINGENCY: Buyer shall act difgently and in good faith to obtain the designated loan(s), Buyers qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agriced in writing. If there is no appraisal costingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise of the purchase price does not entrify Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) LOAN CONTINGENCY REMOVAL:

Within 21 (or cancel this Agrociment. If there is an appraisal contingency, removal of the laan contingency shall not be deamed removal of the approisal confincency.

(4) X NO LOAN CONTINGENCY: Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the Ican and as a result Buyar does not purchase the Property, Selior may be entitled to Buyar's deposit or other legal remedies.

(5) LENDER LIMITS ON BUYER CREDITS: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absonce of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Crucit and the Lunder Allowable Crucit.

K. BUYER STATED FINANCING: Seller is relying on Buyers representation of the type of financing specified (including but not limited to, as applicable, as cash, amount of down payment, or contingent or non-contingent loan). Seller has upreed to a specific closing date, purchase price and to sell to Buyer in rel'ance on Buyer's revenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyar's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. SALE OF BUYER'S PROPERTY:

A. This Agreement and Buyer's ability to obtain linancing are NOT contingent upon the sale of any property owned by Buyer.

- OR B. This Agreement and Buyer's ability to obtain financing are contingent upon the sale of croperty owned by Buyer as specified
- In the attached addendum (C.A.R. Form COP).

| ADDENDA AND ADVISORIES:                                  | X Addension # 1 (C.A.R. Form ADM)                      |
|--|--|
| 1 (Back Up Offer Addendum (C.A.R. Fouri BUD)             | Court Confirmation Adcendum (C.A.R. Form CCA)          |
| I Septic, Well and Procenty Monument Addendum (C.A.R.    | Form SWPI)   |
| I Short Sale Addendum (C.A.R. Form SSA)                  | 1 Other  |
| B. BUYER AND SELLER ADVISORIES:                          | X Buyer's Inspection Advisory (C.A.R. Form BIA)        |
| Probate Advisory (C.A.R. Form PA)                        | Statewide Buyer and Seller Advisory (C.A.R. Form SBSA) |
| I Trust Advisory (C.A.R. Form TA)                        | I TREO Advisory (C.A.R. Form REO)                      |
| 1 Short Sale Information and Advisory (C.A.R. Form SSIA) | i Other  |
| OTHER TERMS: see attached Addendum 1, is incorporated    | as part of contract.                                   |

7. ALLOCATION OF COSTS

A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed, in writing, this paragraph only determines who is to pay for any work is to pay for the inspection, last, partificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report,

(1) Buyer Setter shall pay for a natural hazard zone disclosure report including tax environmental Other:

- prepared by (2) Buyer | Seller shall pay for the following Report
- (3) Buyer Steller shall pay for the fellowing Report
- prepared by B. GOVERNMENT REQUIREMENTS AND RETROFIT:
- (1) Buyur Soller shall pay for smake alarm and carbon monoxide device installation and water heater bracing, if required by Law, Prior to Close Of Escrow ("COE"). Seller shall provide Buyer written statement/\$) of compliance in accordance with state and local Law, unless Seller is exempt.

Buyer's Includes (X /// ) ( CPA REVISED 12/10 (PAGE 2 OF 11)

Seller's Editats (X COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 2 OF 11)



M's Incasi

Produced with Hoformer by pologe 16010 Frees Mas Pists from Michigan 44018 main sal all and

| Property Addresses 6476 Enternal Objet Piles D1/00 Date Andre Alex   |              |
|--|--------------|
| Property Address: 6176 Federal Blvd, San Diego, CA 97114-1401<br>(2) (i) [Buyer ] Seller shall pay the cost of compliance with any other monknown mandatory government inspections at<br>month is invested and the standard sta |              |
| reports il required as a condition of closing escrow under any Law.  | 10           |
|  |              |
| (ii) Buyer Seller shall pay the cost of compliance with any other minimum manifeltary government rotatil standar required as a condition of clasing estroy under any Law, whither the work is required to be completed before or other CO  |              |
| (ii) Buyer's hall be provided, when the time specified in nonograph 18A. a copy of any required poveriation conducted  | Ε.           |
| point-of-sale inspection, report prepared pursuant to this Agreement or in untrapation of this sale of the Property  | f)A          |
| C, ESCROW AND TITLE:   |              |
| (1) (B) Burger Seller shall any encrow tea   |              |
| (b) Escrew Holder shall be   | • *          |
| (b) Escrew Holder shall be<br>(c) The Parties shall, within 5 (or ) Days After receipt, sign and return Escrew Holder's general provisions.<br>(2) (a) Buyer Seller shall pay for owner's life instructor particular parameter 12E   | •            |
| (2) (a) Buyer Seller shall pay for owner's title insurance pasty specified in paragraph 17E  |              |
| (b) Owner's site policy to be issued by  |              |
| (b) Owner's tide policy to be issued by  |              |
| V, UINER (US13)  |              |
| (1) Buyer Soller shall pay County transfer tex or teo  |              |
| (2) Buyer Seller shall pay City transfer tax or fee  |              |
| <ul> <li>(2) Buyer: Seller shall pay City transfer tax or fee</li> <li>(3) Buyer: Seller shall pay Cwners' Association ('OA') transfer fee</li> <li>(4) Seller shall pay Cwners' association ('OA') transfer fee</li> </ul>  |              |
| (1) Active bride her Actives its recontine as possible to be powered by Live Fuger 274   |              |
| 1211 . DUNED Deliet Stall Day UA ICCT by monance of decrements albert the distance and the Cost of the E   |              |
| (6) Buyer to pay for any HOA cartification fee   |              |
| (6) Buyer to pay for any HOA certification fee.<br>(7) Buyer i Seller shall pay for any private transfer foe   | ,            |
| ANTE CONTREPORT CONTREPORT   |              |
| (9) Buyer Sciker shall pay for<br>8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:   |              |
| A NOTE TO DIVED AND EXCLUDED FROM SALE:  |              |
| A. NOTE TO BUYER AND SELLER: how listed as included or excluded in the MLS, fiyers or marketing materials are included in the purchase price or excluded from the sate unless specified in paragraph 3.8, C or D.  | 10           |
| 8. ITEMS INCLUDED IN SALE:   |              |
| (1) AD EXISTING fotures and fillings that are attached to the Property:  |              |
| <ul> <li>(2) EXISTING electrical, mechanical, lighting, plumbing and heating lixtures, ceiling fans, implace insens, gas logs and grates, so</li> </ul>  |              |
| to be such a second the second states and the second states and the second states window the second states and the second second states and the second second states and the second s  | 100<br>100   |
| ukrision antennas, salelle dishas, ar coders/conditioners, poolispa equipment, garage door openers/remote controls, male   | עק.<br>אר    |
| mentand landership tracking the units for and furthing units reference and the second states in the  | , <b>"</b> , |

- in-ground landscaping, trecis/shrubs, water leatures and fountains, water softeners, water punkers, weturky systems/alarms (3) A complete inventory of all personal property of Setter currently used in the operation of the Property and Aduded in the
- putchase price shall be defivered to Buyer within the time specified in paragraph 18A.
- (4) Seter represents that all froms included in the purchase price one, unless otherwise specified or identified pursuant to 38(7), owned by Setion. Within the time specified in paragraph 18A, Seter shall give Buyer a list of lixtures not owned by Setier.
- (5) Seller shall deliver title to the personal property by Bill of Sale, free and clear of all liens and encumbrances, and without seller warranty of condition regardless of value.
- (6) As additional security for any note in favor of Soller for any part of the purchase price. Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase replacement thereof, and insurance proceeds,
- (7) LEASED OR LIENED ITEMS AND SYSTEMS: Seller shall, within the time specified in paragraph 18A. (a) dodese to Buyer if any item or system specified in paragraph 8B or etnewise included in the sate is leased, or not owned by Selier, or specifically subject to a tien or other encombrance, and (ii) Deaver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encombrance, is a contingency in favor of Buyer and Seller as specified in paragraph 188 and C
- C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following items are excluded from sale.

### D. OTHER ITEMS:

- (1) Existing integrated phone and automation systems, including necessary components such as vitrariet and internatconnected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable selfware, permissions, passwords, codes and access information, are [] are NOT) included in the sale,
- CLOSING AND POSSESSION: A. Seller-occupied or Vacont property: Possession shall be defined to Buret: (i) If at 6 PM or (\_\_\_\_\_\_AM/: A. Seller-occupied or Vacont property: Possession shall be defined to Buret: (i) If at 6 PM or (\_\_\_\_\_\_AM/: PM or (\_\_\_\_\_AM/: PM or (\_\_\_\_AM/: PM or (\_\_\_\_\_AM/: PM or (\_\_\_\_AM/: PM or (\_\_\_ 9. CLOSING AND POSSESSION: AMP PM) on the date of
  - Close Of Escrow, (I) no later than \_\_\_\_\_\_ calendar days After Close Of Escrow, or (iii) at \_\_\_\_\_\_ AM# Philon \_\_\_\_\_\_\_ AM# Philon \_\_\_\_\_\_\_ AM# Philon \_\_\_\_\_\_\_ AM# Philon \_\_\_\_\_\_\_ AM# Philon \_\_\_\_\_\_  (i) the Parties are advised to sign a separate occupancy agreement such as [ ] C.A.R. Form CL; and (ii) the Parties are advised to consult with their insurance and legal advisors for information execut liability and durinage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
  - C. Tenant Occupied Units: Possessian and occupancy subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.
  - D. At Close OI Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items inclusived in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and with not determine the assignability of any warranties

Buyers initiate (X // Setor's Indials (X 3 OF 11 COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE JOF 11) atti feleti

### Propeny Address: 6176 Fedoral Blvd, San Diego, CA 92114-1401

----

### Date: March 21, 2017

1

E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, nullboxes, security systems, alams, home autoriation systems and intranet and internet connected devices included in the purchase price and garage dost openers. If the Property is a condemicitim or located in a common interest subclusion, Bayer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities

10. SECURITY DEPOSITS: Security deposits, if any, to the extent they have not been applied by Suller in accordance with any runted agreement and current Law, shall be transforred to Buyer on Close Of Escrow, Seller shall notify each tenant, in compliance with the Card Code,

**11. SELLER DISCLOSURES:** 

A. NATURAL AND ENVIRONMENTAL DISCLOSURES: Seller shall, within the time specifies in paragraph 18, if required by Law. (i) Defiver to Buyer continguishe guides (and questionnake) and environmental nazards booklet; (ii) even it exempt from the obligation to provide an NHD clisclose if the Property Is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Rusponsibility Area; Eartheuake Foult Zone; Seismic Hazard Zone; and (III) disclose any other zone as required by Law and provide any other information required for those zones.

- B. ADDITIONAL DISCLOSURES: Within the time specified in paragraph 18, Seller shall Deliver to Buyer, in writing, the following disclosures, documentation and information:
  - (1) RENTAL SERVICE AGREEMENTS: (i) All current leases, rental agreements, service contracts, and other agreements penalning to the operation of the Property: and (ii) a rental statement including names of tenants, rental rates, period of rental, date of last ront increase, security deposits, rental concessions, rebates, or other bandits, if any and a fist of delinquent rents and their duration. Selier represents that no tenant is entitled to any concession, rebate, or other benefit, except as set forth in these documents.
  - (2) INCOME AND EXPENSE STATEMENTS: The books and records, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of feneral and state income tax returns.
  - (3) TENANT ESTOPPEL CERTIFICATES: (if checked) Tenant estopped condicates (C.A.R. Form TEC) completed by Selar of Seller's agent, and signed by tenants, acknowledging: (I) that tonants' rentat or tease agreements are unmodified and in hus force and effect (or 8 modified, stating all such modifications); ((ii) that no lessor defaults exist, and (iii) stating the amount of any prepaid rent or security deposit.
  - (4) SURVEYS, PLANS AND ENGINEERING DOCUMENTS: Copies of surveys, plans, specifications and engineering documents, if any, in Seller's possession or control,
  - (5) PERMITS: It in Seller's possession, Copies of all permits and approvals concerning the Property, obtained from any governmental entity, including, but not limited to, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.
  - (6) STRUCTURAL MODIFICATIONS: Any known structural additions or alterations to, or the installation, atteration, repair or replacement of, significant components of the structure(s) upon the Property.
  - (7) GOVERNMENTAL COMPLIANCE: Any improvements, additions, alterations or repairs made by Seller, or known to Selin to have been made, without required governmental permits, final inspections, and approvals,
  - (8) VIOLATION NOTICES: Any notice of violations of any Law filed or insuled against the Property and actually known to Seller. (9) MISCELLANEOUS ITEMS: Any of the following, if actually known to Selar; (1) any ourrent pending lawsuk(s), investigation(4).
  - inquirylies), action(s), or other proceeding(s) allocating the Property, or the right to use and occupy it: (ii) any unsatisfied mechanics or materialman's len(s) affocting the Property: and (iii) that any tenant of the Property is the subject of a 23% hiptory.
- C. WITHHOLDING TAXES: Within the time specified in caregraph 18A, to avoid required withholding Seller shall Deliver to Buyer or qualified substitute, an allidavil sufficient to comply with lederal (FIRPTA) and California withholding Law, (CA.R. Form AS or OS).
- D. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES; This motice is being provided simply to Inform you that information about the general location of gas and hazardous figuid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at http://www.npms.phmsa.dot.gov/. To seek further information about possible transmission pipelines near the Property. You may contact your local gas utility or other plooline operators in the area. Contact information for pipoline operators is searchable by ZIP Code and county on the NPMS Internet Web site
- E. CONDOMINIUM/PLANNED OEVELOPMENT DISCLOSURES:

(1) SELLER HAS: 7 (or \_\_\_\_\_) Days Alter Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or citier common interest subdivision.

(2) If the Property is a condominitum or is located in a planned development or other common interest subdivision, Seller has ) Days After Acceptance to request from the OA (C.A.R. Form HOA I); (i) Copies of any documents required by Lew. (ii) 3 (or disclosure of any pending or anticipated claim or Rigation by or against the DA; (iii) a statement containing the location and number of designated parking and starage spaces; (iv) Copies of the most recent 12 months of OA munutes for regular and special meetings; and (v) the names and contact information of all OAs governing the Property (collectively, "CI Disclosures"). Softer shull itemize and Deliver to Buyer dB CI Disclosures received from the OA and any CI Disclosures in Setter's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement us specified in paragraph (EB(3). The Party specified in paragraph 7, as directed by essercia, shall deposit funds into escrew or direct to OA or management company to pay for any of the above

Biryer's Initials (X\_ CPA REVISED 12/15 (PAGE 4 OF 11)

Seller's trullots (X COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE OF 11) mit the and pair 18070 Fitters Will Rand Frener Withigen 4502



Property Address. 6176 Fedoral Blvd, San Diogo, CA 92114-1401 Date: March 21, 2017 12. ENVIRONMENTAL SURVEY (It mecked): Yilling Days After Acceptance, Buyer shall be provided a phase one environmental survey report poid for and obtained by [Buyer [Seller, Buyer shall then, as specified in paragraph 18 remove this contingency or cancel the Agreement.

- 13. SUBSEQUENT DISCLOSURES: In the event Seller, prior to Close Of Eschuw, becomes invare of adverse concidents materially affecting the Property, or any material inaccurrery in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware. Soller shall promptly Deliver a subsequent or amended disclasure or notice in writing, onvering those nems. However, a subsequent or amended disclosure shall not be required for conditions and material indecuracias disclosed in reports ordered and paid for by Buyer.
- 14. CHANGES DURING ESCROW:
  - A. Prior to Close Of Escrow, Sofer may only engine in the following acts. ("Probased Changes"), subject to Buyer's rights in paragraph 14B: (i) rentror loads any vecant unit or other part of the premises; (ii) after; modify, or extend any existing rents or loads opubment: (III) enter into, utur, modify or extend any service controct(s); or (Iv) change the status of the condition of the Property
  - B. (1)7 (or ) Days prior to only Proposed Changes, Seller shall Deliver written notice to Buyer of any Proposed Changes (2) Within 5 (or \_\_\_\_) Days Atter receipt of such notice Buyer, in we Changes in which case Setter shall not make the Proposed Changes. ) Days After receipt of such notice. Buyer, in writing, may give Seller noticy of Buyer's objection to the Proposed
- 15. CONDITION OF PROPERTY: Unless subminise agreed in writing. (1) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights, (ii) the Property, including post, spa, landsceping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (III) all doors and verscript property not included in the sale shall be removed by Close Of Escrew.
  - A. Seler shall, within the time specified in paragraph TEA, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law
  - B. Buyer has the right to conduct Biryer Investigations of the property and, as specified in puragraph 18B, based upon information discovered in those Investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
  - C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code; in compliance with current Law, or have had permits issued.
- 16. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:
  - A. Buyer's acceptance of the condition of, and any other matter attenting the Property, is a contingency of this Agreement as streative in this paragraph and paragraph 188. Within the time specified in peragraph 188(1), Buyer shall have the right, at Buyer's expense urturs otherwise agreed, to conduct inspections, investigations, tasis shavoys and other studies ("Buyor Investigations"), including, but not finited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying petts and organisms. Any inspection for wood destroying peets and organisms shall be propared by a registered Structural Post Control company; shall cover the main building and attached structures, may cover detached structures; shall NOT include water tasts of shower cons on upper level units unless the owners of property below the shower convent, shall HOT include tool coverings, and. If the Property is a unit in a condominium or other common intervit subdivision, the importion shift include only the separate latered and any exclusive-use evers being transformed, and shall NOT include common areas, and shall include a moore ("Peal Control Report") showing the factors of the company which shall be separated into sections to evident elestration or infections (Section 1) and for conditions thely to lead to infections or infection (Section 2), (III) review the registered was aligned delabase: (Iv) continue the insurability of Buyer and the Property including the availability and cost of Bood and fire insurance, (v) toview and seek approval of leases that may need to be assumed by Buyer; and (vi) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form 51A), Without Seler's orlor written consent. Buyer shall neither make nor cause to be made: (I) invastre or destructive Eaver Investigations except for minimally evasive tasting required to propide a Post Control Report; or (II) inspections by any governmental building or zoning respector or government employee, unloss required by Law,
  - B. Seller shall make the Property available for all Buyer tovostigations. Buyer shall (I) as specified in paragment 18B, complete Buyer Investigations and either remove the entitingency or cancel this Agreement, and (iii) give Sofier at no cost, complete Copies of all such investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
  - C. Sefer shall have water, gas, electricity and all operable plot anhis on los Buyer's investigations and through the date passession of made available to Buyer.
  - O. Buyer indomnity and seller protection for entry upon property: Super shall (1) keep the Property free and clear of hens; (ii) repair all demade among tem Buyer Investigations, and (iii) indemnity and held Selier namiliess from all resulting fability, claims, demanos, damages and costs. Buyer shall carry, or Birger shall rogarie onlyone acting on Buyer's behall to carry, practice of laberty, workers' compensation and other applicable insurance detending and protecting Seller from Fablicy for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buller's cirection prior to Ciese OI Essney. Seler is addised that certain protections may be utilized Seler by recording a "Notice of Non-Responsibility" (C.R. Form NIR) for Buyer Investigations and work Jone on the Property at Buyer's detection. Buyer's exemptions under this paragraph shall survive the termatation of this Agreament.

- A. Within the time specified in paragraph 13, Bayer shall be provided a current pretrainary tide report ("Pretiminary Report"). The Pretiminary Report Is only an other by the I be insurer to issue a policy of this insurance and may not contain every item attenting title Buyer's review of the Preliminary Report and any other matters which may affect fille are a contingency of this Agreement as usedfied in paragraph 188. The company providing the Proliminary Report shall prior to issuing a Prelaminary Report, conduct a search of that General Index for all Sellers except banks or other institutional landers soling properties they acquired through foreclerure (REOs). corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of latornation.
- B. Title is taking in its present condition subject to all encumbrances, easements, covernants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for; (i) monetary liens of record (which Solier is obligated to pay nit) unless Buyer is assuming those obligations or taking the Property subject to those obligations, and (ii) those matters which Sellar has agreed to remove in writing.
- C. Within the time specified in paragraph 184. Seller has a duty to cisclose to Buyer all mallers within it. Seller atjecting tite, whether of

record of Det Buyers Inbals (X ) ( CPA REVISED 1215 (AGE 5 OF 11) COMMI Sesers indiats ( X COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGES OF 11) St. St. Fernil by Thing's CALIF From Like Read Fines Mentine (10) - Cara Things

11.4 1 - 4----

<sup>17.</sup> TITLE AND VESTING:

### Property Address: 6176 Federal Blvd, San Dicyo, CA 92114-1401

### Date: March 21, 2017

- 19. REPAIRS: Repairs shall be completed prior to lingl ventication of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including govornmental permit, inspection and appreval requirements. Resains shall be performed in a good, skilled manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosinelic items following all Repairs may not be possible. Seller shall, (I) obtain involces and paid receipts for Repairs performed by others: (II) property a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 20. FINAL VERIFICATION OF CONDITION: Buyor shall have the right to make a final verification of the Property within 5 for ) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained bursuant to paragraph 15; (II) Repairs have been completed as agreed; and (III) Selier has complied with Selier's other obligations under this Acreement (C.A.R. Form VP), 21. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS: Unless otherwise agreed in writing, the following items shall be PAID
- CURRENT and prorated between Buyer and Selier as of Close Of Escrow: real property taxes and assessments, interest, rents, OA regular, special, and emergency dues and assessments imposed prior to Close Of Escrew, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Ivelto-Roos and other Special Assessment Distoct bonds and assessments that are now a fear, The following itums shall be assumed by Buyer WITHOUT OREDIT loward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bile shall be paid as follows? (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information), TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

### 22. BROKERS:

- A. COMPENSATION: Seller or Buyer, or both, os applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Beyer. Compensation is payable upon Close Of Escrew, or if escrew does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. BROKERAGE: Neither Buyer nor Seller has utilized the services of, or for any other reason ower compensation to, a mensed real estelle broker (individuel or corporate), agent, finder, or other endly, other than an specified in this Agreement, in connection with any act relating to the Property, Including, but not Envirod to, inclutions, Introductions, consultations and negotiations hading to this Agreement. Buyer and Seller each agree to indemnity, defend, and hold the other, the Brakers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed laconsistent with the warrianty and representations in this paragraph.
- C. SCOPE OF DUTY: Buyer and Seller acknowledge and spree that Bricker (i) Does not decide what price Buyer should pay or Seller should accept (iii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequary or completeness of inspections, services, products or repairs provided or made by Seller or others: (iv) Does not have an obligation to conduct an inspection of common areas or areas of the site of the Propenty; (v) Shall not be responsible for identifying defects on the Property. In common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or purmits concerning the title or use of Property; (viii) Shall not be responsible for identifying the location of boundary lines or other items affecting atte, (viii) Shall not be responsible for verifying square loctage, representations of others or information contained in investigation reports, Multiple Listing Service, advortisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any expect of a transaction entered into by Buyer or Soller, and (ki) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, life and other desired assistance from appropriate professionals.
- 23. REPRESENTATIVE CAPACITY: If one or more Parses is signing the Aqueement in a representative capacity and not for him/horself as an individual then that Party shall so indicate in paragraph 40 or 41 and attach a Representative Capacity Signature Disclosure (CA.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an incividual capacity, unless otherwise indicates. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authonity to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code 15100.5), letters testamentary, court order, power of attampy, corporate resolution, or formation documents of the business entity). 24, JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:
- A. The following paragraphs, or applicable perions thereof, of this Agreement constitute the joint escrew instructions of Buyar and Soller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and adcence, and any additional mutual instructions to close the escretive paragraphs 1, 3, 4B, 5A, 6, 7, 10, 11D, 17, 18G, 21, 22A, 23, 24, 30, 38, 39, 41, 42, and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the sectionate compensation agreement(s) provided for in paragraph 22A, or paragraph D of the section thed Real Estate Brokers on page 11 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyers or Seler's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and contitions of this Agreement not set forth in the specified paragreens are additional matters for the Intermation of Escrow Hoker, but about which Educive Holder need not be concerned. Super and Seler wit receive Escrow Holder's peneral provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsident or conflict with this Agreement, the general provisions will centrel as to the cubes to the balance are general provisions and inconsecutive of councer with this agreement, the general provisions we control as 30 the cubes
   text obligations of Escrew Holder only. Buyer and Seller will execute additional instructions, decomposits and forms provided by Escrew
   Holder that are reasonably necessary to close the escrew and, as directed by Escrew Holder, within 3 (or \_\_\_\_) Days, shall pay to Escrew
   Holder or bloarp HCA management company or others any lee required by paragraphs 7, 15 or escivatione in this Agreement.
   Buyer's Initials (X\_\_\_\_\_\_\_) (\_\_\_\_\_)
   CPA REVISED 12/15 MAGE 7 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE + 0 11) Produced with disformed by risk ogta 18022 F. Jones Male River Managare 68026 - ----

a 124 di misrati

### Property Address: 6176 Fedoral Blvd, San Diego, CA 92114-1401

Date. March 21, 2017

1.1

- D. At Cless Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-form lease, an assignment of stock contribution or of Seller's lease-old interest), including oil, mineral and water rights if currently owned by Seller. The shall vost as designated in Buyer's supplemental escrow distructions. THE MANNER OF TAKING TITLE MAY FLAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES, CONSULT AN APPROPRIATE PROFESSIONAL.
- E. Buyer shall receive a standard coverage owners CLTA percy of site insurance. An ALTA pelicy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's recuest, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. It Buyer desires title coverage other than that required by this parograph, Buyer shall instruct Escrew Holder in writing and shall pay any increase in cost.
- 18. TIME PERIODS: REMOVAL OF CONTINGENCIES: CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (CA.R. Form CR or CC).
  - A. SELLER HAS: 7 (or \_\_\_\_\_) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Solid is tesponsible under paragraphs 5A, 6, 7, 6B(7), 11A, B., C, D and E, 12, 15A and 17A Buyer aller first Delivering to Seler a Notice to Seler to Ferrom (C.A.B., Form NSP) may cancel this Agroement if Seler has not Deliverad the items within the time specified.
     B. (1) BUYER HAS: 17 (or \_\_\_\_\_) Days After Acceptance, unloss otherwise agreed in writing, to
    - (f) complete All Ruyer Investigations; notive all discontrast, reports, loss documents to be assumed by Buyer pursuant to paragraph 65(7) and other applicable information, which Buyer receives from Sefert and approve all motions affecting the Property.
       (2) Within the time specified in periograph 168(1), Buyer may request that Solier make reparts or take any other action regarding
    - the Property (CAR, Form RR). Seler has no obligation to agree to or respond to (CAR, Form RRR) Buye's requests
    - (3) By the end of the time specified in paragraph 188(1) (or as otherwise specified in this Agreement), Buyer shall betwer to Seller a removal of the applicable contingency or cancetation (C.A.R. Form CR or CC) of this Agreement. However, if any robott, disclosure or information for which Seller is responsible is not betwered within the time specified in paragraph 18A, then Buyer has 5 (or \_\_\_\_\_) Days Alter Delivery of timy such items, or the time specified in paragraph 18B(1), whichever is falter, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
    - (4) Continuation of Contingency: Even after the end of the time specified in paragraph 16B(1) and beliere Soliet cancels, if at all, pursuant to paragraph 18C, Buyer retains the right. In writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 18C(1).
  - C. SELLER RIGHT TO CANCEL
    - (1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in tals Agreement, Buyer does not Deliver to Seller or removal of the applicable contingency or cancellation of this Agreement, then Seller atter and Delivering to Buyer a Notice to Buyer to Perform (CAR Form NBP); may cancel this Agreement. In such event, Seller shall authorize the return of Buyers deposit, except for feed incuired by Buyer.
    - (2) Seller right to Cancel; Buyer Contract Obligations: Seler, after first delivering to Buyer # NBP, may cancel this Agreement #, by the time specified in this Agreement, Buyer does not take the following botion(s); (i) Deposit funds as recursed by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Defiver a letter as required by paragraph 3J(1); (iii) Defiver a letter as required by paragraph 3J(1); (iii) Defiver a letter as required by paragraph 3J(1); (iii) Defiver a letter as required by paragraph 3J(1); (iii) Defiver a letter as required by paragraph 3J(1); (iv) Defiver a letter as required by paragraph 3J(1); (iv) Defiver a letter as required by paragraph 3J(1); (v) Sign or vertication provided by paragraph 3D or 3H; or (hv) in writing assume or accept bases or firm specified in (BE(7); (v) Sign or initial a separate Equidated damages form for an increased deposit as required by paragraphs 3B and 259; or (vi) Pronce evidence of authomy to sign in a representative capacity as specified in paragraph 23. In such event, Geter shall authorize the return of Buyor's deposit, except for fees incrumed by Buyer.
  - D. NOTICE TO BUYER OR SELLER TO PERFORM: The NBP or NSP shall (i) be in writing; (ii) be signed by the applicable Buyer or Seller, and (iii) give the other Party at least 2 (or \_\_\_\_\_) Days After Defining (or unit the time specified in the upplicable paragraph, whichever occurs tast) to take the applicable scion. A NBP or NSP may not be Defined any easter than 2 Days Prov to the consistent of the applicable time for the other Party to remove a contargency or cancel this Agreement or meet an obligation specified in paragraph 18.
  - E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any consequency or cancellation nexts unless otherwise specified in writing. Ever shall conclusively be deemed to have (i) completed all Buyer trivestigations, and review of reports and other applicable information and disclassines pertaining to that contingency or cancellation right! (ii) elected to proceed with the transaction and (iii) assumed as liability, responsibility and expense for Repairs or corrections portaining to that contingency or cancellation right! (ii) optimizing to that contingency or cancellation right, or for the insbility to obtain financing.
  - F. CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Soller; and (ii) give the other Party at least 3 (or \_\_\_\_\_) Days After Delivery to close escrew, A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrew.
  - C. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Selicit gives written notice of cancellation personni to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and oscrow and release deposits if any, to the party entitled to the funds, less less and costs incurred by that party. Foes and costs may be purable to service providers and vandors for services and products provided during ascrow Except as specified balow, release of funds will require motival Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to exercise mutual instructions to cancel except, cancel except as specified balow, release of funds will require motival Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to exercise mutual instructions to cancel excroit, one Party may make a written demadd to Escrow Holder for the deposit (C AR, Form 3DRD or SDRD), Escrow Holder, upon receipt, chall promptly deliver notice of the domand to the other Party (I, within 10 Days After Escrew Helder's notice, the demosit to the demand, Escrew Helder shall discurse the deposit to the Party making the demand. If Escrew Holder complets with the protecting process, each Party shaft to down to have release Escrew Helder (rom any and all datins or Eablity related to the disbursal of the deposit. Escrew Holder, us to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposit found (civil Code §1057.3).

KII Éuver's Initials i X Scillur's Initials (X). 14 CPA REVISED 1215 (PAGE & OF 11) COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 6 OF 11) 

Seller's Inilia's

Property Address; 6176 Federal Blvd, San Diego, CA. 92114-1401 B. A Copy of this Agreement Including any counter offer(s) and addanca shall be delivered to Excitive Polder within 3 Days After Accuptance for ) Buyer and Seller authorize Escrow

- Holder to accept and roly on Caples and Signatures as defined in this Agreement as originals, to epen excrew and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement, Escrow Holder shall provide Saller's Statement of Information to Title company when received from Seller. If Seller delivers an all davit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C. Escrow Holder shall dutivar to Buyer a Qualified Substitute statement that compiles with foderal Law,
- C. Brokers are a party to the esciew for the sole purpose of compensation pursuant to paragraph 22A une paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller inevocably assign to Brokers compension specified in paragraph 22A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers of Close Of Escrow or pursuant to any other mutually executed canonitation agreement. Compensation instructions can be amonded or revoked only with the whiten consent of Brekers. Buyer and Selfer shall release and hold harmless Escrew Holder from any trability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- D. Upon receipt, Essrow Halder shall previde Soller and Seller's Broker verification of Super's depart of funds persuant to paragraph JA and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (I) if Buyer's Initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrew Holder to cancel escrew.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shaft be delivered to Escrow Holder within 3 Days after mutual execution of the amondment,

### 25. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit nonrefundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be degreed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- 8. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Sellar shall retain, as liquidated damages, the deposit actually paid. Buyer and Sellor agree that this amount is a reasonable sum given that it is impactical or extended difficult to establish the amount of damages that would actually be suffered by Scher in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Soller, judicial decision or orbitation award. AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. ARM RID).

Buyer's Initialis

### 26. DISPUTE RESOLUTION:

- A. MEDIATION: The Parties agree to provide any dispute or claim arising between them out of this Agreement, or bay resulting transmission. before reporting to arbitration or court action through the C.A.R. Constituter Madiation Center (www, consumermediation.org) or through any other mediation provider or service mutually byreed to by the Parices. The Parices also agree to mediate any disputes or claims with Brokar(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker, Modation fees, if any, shall be divided equally among the Parties Involved, II, for any dispute or claim to which this paragraph applies, any Porty (i) commences on action without first elemping to resolve the matter through mesiation, or (ii) before commencement of an action, refuses to mediate after a request has been made, than that Party shall not be entitled to recover attorney (ees, even if they would cherwise the available to that Party in any such action. THIS MEDIATION FROMISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 26
- B. ARBITRATION OF DISPUTES: The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Partles also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

's Initials<sup>9</sup> Suyer's Initials Buyors Indians (A ) | CPA REVISED 1215 (PAGE 8 OF 11) Seller's Indias ( X 1.55 1 COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE & OF 11) 4174 Federal Sound by relayin 16210 Friden Min Rass Frank Michain 43(2) and 2 Product wires

### Property Address: 6176 Federal Blvd. San Diego, CA 92114-1401

### Date March 21, 2017

1.57

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

(1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a dead of trust, mortgage or installment land sale contract as defined in Civil Code §2995; (ii) an uniswful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

- (2) PRESERVATION OF ACTIONS: The following shall not constitute a waiver nor violation of the mediation and arbitration provisions; (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) BROKERS: Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.
- 27. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 28. MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM: If Broker is a participant of a Multiple Listing Service (MLS) or Property Data System (PDS), Broker is nuthorized to report to the MLS or PDS a pending sale and, upon Okse Of Escrow, the terms of dis transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.
- 29. ATTORNEY FEES: In bny action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be embled to reasonable attorneys fees and casts from the non-prevailing Buyer or Seller, except as provided in paragraph 26A.
- 30. ASSIGNMENT: Buyar shall not assign all or any part of Buyars interest in this Agreement without first having obtained the written consent of Setor. Such consent shall not be unreasonably withheld unless etherwise agreed in writing. Any total or cantal assignment shall not relieve Buyer of Buyer's oblightions pursuant to this Agreement unless otherwise agreed in writing by Seter (C.A.R. Form AOAA).
- 31. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and linere to the coneff. of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
- 32 ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Seller acknowledge: (I) Federal, state, and local logislation impose liability upon existing and former owners and usars of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (II) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (III) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances; if any located on or potentially affecting the Property and (iv) Buyer and Seller are each advised to consult with technical and legal expansion or potentially affecting the Property, located and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property, located and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property located and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.
- 33. AMERICANS WITH DISABILITIES ACT: The Antericone, Web Disabilities Act ("ADA") protects decriminator against indexector with disabilities, The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other manys, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterators to existing buildings, and removal of comforts in existing buildings. Compliance with the ADA may require significant costs, Monetary and riumctive remedies may be incurred if the Property is not in compliance. A real estate protect does not have the technical expenses to determine whether a building is in compliance with ADA requirements, or to advise a concipal on those requirements. Buyer and Safer are advised to contact an attorney, contractor, architect, engineer or other qualities professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
- 34. COPIES: Seler and Buyer each represent that Copies of all reports, documents, controlles, approvats and other documents that are turnished to the orginal documents, if the orginals are in the possession of the lumishing party.
- 35, EQUAL HOUSING OPPORTUNITY: The Property is sold in compliance with federal, state and local and discrimination Laws.
- 36, GOVERNING LAW: This Agreement shall be governed by the Laws of the state of California
- 37. TERMS AND CONDITIONS OF OFFER: This is an offer to parchase the Property on the above terms and conditions. The liquidated damages paragraph of the arbitration of disputes paragraph is incorporated in this Agreement if initiated by all Porties or if incorporated by mutual agreement in a counter offer or addandum, if it least not out not all Parties initial, a counter offer is required until agreement is reached. Selfer has the right to continue to offer the Property for sale and to access any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to that confirmation of agency relationships. If this offer is accepted and any supplement, addendum, or modification, including any Copy, may be send to the same writing.

Signed in two er more counterpans, all of which chall constitute one and the same writing. 38. TIME OF ESSENCE: ENTIRE CONTRACT: CHANGES: Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any proc agreement or contemporaneous oral agreement. It any provision of this Agreement is held to be ineffective or invabid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, it's Agreement and the interpreted and diputes shall be respected and diputes shall be

- 39. DEFINITIONS: As used in this Agreement.
  - A. "Acceptance" mans the time the offer or final counter offer is accepted in writing by a Party and is detivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this effer or a final counter offer.
  - B. "Agrooment" means this document and any counter offers and any incorporated addenda/toffectively forming the binding presented by the Parties. Addenda Acidenda are incorporated only when Signed by all Parties.

agreement between the Parties. Addenda are incorporated only when Signed by all Parties. Buyars Initiats (X \_\_\_\_\_\_) ( \_\_\_\_\_) ( \_\_\_\_) ( \_\_\_) ( \_\_\_) ( \_ Secera Initiats (X 16 COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 9 OF 11) as's bederet Produced will defense by everyal 19370 Fillion Side hoard (many Michigan 65020 - monutal back and

| V. V.M.R. POIM  | 5 Federal Blvd, San Diego, CA 92114-1401  | Date March 21, 2017<br>referenced or another comparable form agrood to by  |
|---|---|--|
| the parties.  |   |  |
| D. "Close Of Esc  | row" or "COE" means the date the grant deed, or other e   | widence of wansfer of tille, is recorded   |
| E. "Copy" means   | copy by any means including photocopy, NCR, facsimile   | and electronic.  |
| F. "Days" means   | calendar days, However, after Acceptance, the fast Day  | for performance of any act moving by this Agreement  |
| (including Close  | 2 Of Escrow) shall not include any Saturday (Sunday, or loc   | al holiday and shall instead he the next Day   |
| G. "Uays Atter"   | means the specified number of calendar days after the   | c occurrence of the event specified, not counting the  |
| H. "Dave Prior"   | on which the specified ovent occurs, and ending at 11:59 f<br>means the specified number of catendar days before it   | M CR ING INGI CBY.   |
| calendar data c   | means the specified event is scheduled to occur.  | ie occurrence of the event spectified, not counting the  |
| L "Deliver", "De  | allivered" or "Delivery", unless otherwise specified in   | willing means and shall be effective upon personal   |
| receipt by Biry   | er ar Seiler or the Individual Real Estato Licensee for the   | I principal as specified in the section tiled Real Estate  |
| Brokers on pag  | is 11, regardless of the method used (i.e., messenger, ma   | il, émáil, (ax, other)   |
| J. "Electronic Co   | opy" or "Electronic Signature" means, o's opplicable, a   | a electronic copy or signature complying with California   |
| Lew. Buyer an   | d Seller agree that electronic means will not be used by  | eline: Party to modify or after the content or integrity of  |
|   | t without the knowledgo and consent of the other Party.<br>Any law, code, statute, ordinance, regulation, rule or orde  | e sufficient investigation and the second  |
|   | ive, judicial or executive body or agency   | i, which is adopted by a controlling diff. county, since of  |
|   | ans any repairs (including post control), alterations, rep  | acements, modifications or retrofiting of the Property   |
| provided for un   | ider this Agreement.  | ,  |
|   | ns eithér a handwritten or electronic signature on an origi   |  |
|   | person or persons signing this Agreement represent(s) th  |  |
|   | and that the designated Duynr and Seller has full authority I   |  |
|   | is completion of the obligations pursuant to this contract.   |  |
|   | awa, Operating Agreement, Partnership Agreement or other o<br>OFFER: This offer shall be deemed revoked and the dep   |  |
| Signed by Sollers   | and a Copy of the Sinned other is nersonally merilion by  | Buyer, or by see Addendum 1  |
| who is authorized   | and a Copy of the Signed offer is personally received by<br>to receive it, by 5:50 PM on the third Day after this offer   | a smeet av Buver (or by  |
|   | (date)).  |  |
| Oco or more Bunn  | is is signing the Agreement in a representative capacity  | and not for the thereast as an individual. See attached  |
| enretionizive Cana  | city Signature Disclosure (C.A.R. Form RCSD-B) for addit  | chalterns.   |
| 7.010   | 7117-1-   | · · · · · · · · · · · · · · · · · · ·  |
| 10 A17/   | BUYER Mil Wing  |  |
| Print name) Platiaid  | John Slanin N   |  |
|   |   |  |
| ale   |   |  |
|   |   |  |
| Print name)   |   | and a start for any second start and the second   |
|   |   |  |
| Additional Simonic  | a Addendum marhad (C.A.D. Com ASL)  |  |
|   | re Addendum attached (C.A.R. Form ASA).   |  |
| -   | FOFFER: Seller warrants that Solier is the owner of the   | Property, or has the outhority to execute this Agreement.  |
| 2. ACCEPTANCE C   | FOFFER: Seller warrants that Seller is the owner of the<br>in above offer and annes to sell the Property on the   | above terms and conditions, and agrees to the above  |
| 2. ACCEPTANCE C<br>Seller accepts th<br>continuation of a   | OF OFFER: Seller warrants that Seller is the owner of the<br>a above offer and agrees to sell the Property on the<br>mency relationships, Seller has read and asknowledge   | above terms and conditions, and agrees to the above  |
| 2. ACCEPTANCE C<br>Seller accepts th<br>contrimation of a<br>Broker to Deliver  | OF OFFER: Seller warrants that Seller is the owner of the<br>is above: offer and agross to sell the Property on the<br>gency relationships. Seller has read and asknowledge<br>a Signed Copy to Buyer.  | above turns and concisions, and agrees to the above<br>a receipt of a Copy of this Agrooment, and authorizes   |
| 2. ACCEPTANCE C<br>Seller accepts th<br>continuation of a<br>Broker to Deliver  | OF OFFER: Seller warrants that Seller is the owner of the<br>is above: offer and agross to sell the Property on the<br>gency relationships. Seller has read and asknowledge<br>a Signed Copy to Buyer.  | above turns and concisions, and agrees to the above<br>a receipt of a Copy of this Agrooment, and authorizes   |
| 2. ACCEPTANCE C<br>Seller accepts th<br>continuation of a<br>Broker to Deliver  | OF OFFER: Seller warrants that Seller is the owner of the<br>a above offer and agrees to sell the Property on the<br>mency relationships, Seller has read and asknowledge   | above turns and concisions, and agrees to the above<br>a receipt of a Copy of this Agrooment, and authorizes   |
| 2. ACCEPTANCE C<br>Seler accepts th<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE   | OF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships, Seller has read and acknowledge<br>a Signed Copy to Buyer.  | above turns and conditions, and agrees to the above<br>s receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for bim/harself as an individual. See altached  |
| 2. ACCEPTANCE C<br>Soller accepts th<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE  | OF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships, Seller has read and acknowledge<br>a Signed Copy to Buyer.  | above turns and conditions, and agrees to the above<br>s receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for bim/harself as an individual. See altached  |
| 2. ACCEPTANCE C<br>Seller accepts th<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>One or more Sell<br>Representative C  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships, Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO   | above turns and conditions, and agrees to the above<br>s receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for bim/harself as an individual. See altached  |
| 2. ACCEPTANCE C<br>Seller accepts th<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>One or more Sell<br>Representative C  | OF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships, Seller has read and acknowledge<br>a Signed Copy to Buyer.  | above turns and conditions, and agrees to the above<br>s receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for bim/harself as an individual. See altached  |
| 2. ACCEPTANCE C<br>Seller accepts th<br>contimistion of a<br>Braker to Defiver<br>[] (If checked) SE<br>[] One or more Set<br>Representative C<br>Date 3 - 21 - 2   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledge<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>lers is signing the Agreement in a representative capacit<br>lapacity Signature Discover (C.A.R. Form RCSD-S) for a<br>SELLER   | above turns and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED;<br>y and not for him/hersulf as an individual. See attached<br>additional terms.   |
| 2. ACCEPTANCE C<br>Seller accepts th<br>contimistion of a<br>Braker to Defiver<br>[] (If checked) SE<br>[] One or more Set<br>Representative C<br>Date 3 - 21 - 2   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above ofter and agrees to sell the Property on the<br>igency relationships. Seller has read and acknowledge<br>a Signed Copy to Buyor.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>Gers is signing the Agreement in a representative capacit<br>capacity Signature Disclosure (C.A.R. Form RCSD-S) for a<br>SELLER   | above terms and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/herself as an individual. See altached<br>additional terms.   |
| 2. ACCEPTANCE C<br>Seder accepts th<br>contirmation of a<br>Broker to Deliver<br>[] (If checked) SE<br>[] (If checked) SE<br>[] One or more Sel<br>Representative C<br>Date   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above ofter and agrees to sell the Property on the<br>igency relationships. Seller has read and acknowledge<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>durs is signing the Agreement in a representative capacit<br>capacity Signature Disclosure (C.A.R. Form RCSD-S) for a<br>SELLER   | above turns and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED;<br>y and not for him/hersulf as an individual. See attached<br>additional terms.   |
| 2. ACCEPTANCE C<br>Seller accepts th<br>contimistion of a<br>Braker to Deliver<br>[] (If checked) SE<br>[] One or more Set<br>Representative C<br>Date<br>[Print name) <u>Derry (C</u><br>Date  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.   | above turns and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/herse/f as an individual. See attached<br>odditional terms.   |
| 2. ACCEPTANCE C<br>Seller accepts th<br>contimistion of a<br>Braker to Deliver<br>[] (If checked) SE<br>[] One or more Set<br>Representative C<br>Date<br>[Print name) <u>Derry (C</u><br>Date  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.   | above terms and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/herself as an individual. See altached<br>additional terms.   |
| 2. ACCEPTANCE C<br>Selicer accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>[] One or more Selic<br>Representative C<br>Date<br>[Print name) <u>Derryt (</u><br>[Print name)  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above ofter and agrees to sell the Property on the<br>igency relationships. Seller has read and acknowledge<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>ders is signing the Agreement in a representative capacit<br>isopacity Signature Disclosure (C.A.R. Form RCSD-S) for a<br>SELLER  | above turns and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/herse/f as an individual. See attached<br>odditional terms.   |
| 2. ACCEPTANCE C<br>Soller accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>. One or more Self<br>Representative C<br>Date<br>[Print name) <u>Darry!</u> (<br>Oate<br>[Print name)   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.   | above terms and conditions, and agrees to the above<br>s receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/herse/f as an individual. See attached<br>odditional terms.   |
| 2. ACCEPTANCE C<br>Soller accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>. One or more Self<br>Representative C<br>Date<br>[Print name) <u>Darry!</u> (<br>Oate<br>[Print name)   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.   | above terms and conditions, and agrees to the above<br>s receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/herse/f as an individual. See attached<br>odditional terms.   |
| 2. ACCEPTANCE C<br>Seller accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>. One or more Sell<br>Representative C<br>Date<br>[Print name) <u>Darry!</u> (<br>Oate)<br>[] Acditional Signatu<br>() (D<br>(Initiab))  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>Hers is signing the Agreement in a representative capacit<br>capacity Signature Discover (C.A.R. Form RCSD-S) for<br>SELLER  | Above terms and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/herse/f as an individual. See altached<br>additional terms.   |
| 2. ACCEPTANCE C<br>Seller accepts th<br>continuition of a<br>Broker to Deliver<br>[] (If checked) SE<br>  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>lers is signing the Agreement in a representative capacit<br>isopacity Signature Discover (C.A.R. Form RCSD-S) for a<br>SELLER   | Above terms and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>additional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>a (date)at<br>Depy of Signed Acceptance is personally received by<br>confirmed in this document. Cempletion of this  |
| 2. ACCEPTANCE C<br>Seller accepts th<br>continuition of a<br>Broker to Deliver<br>[] (If checked) SE<br>  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>lers is signing the Agreement in a representative capacit<br>isopacity Signature Discover (C.A.R. Form RCSD-S) for a<br>SELLER   | Above terms and conditions, and agrees to the above<br>a receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>additional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>a (date)at<br>Depy of Signed Acceptance is personally received by<br>confirmed in this document. Cempletion of this  |
| 2. ACCEPTANCE C<br>Seller accepts th<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>lers is signing the Agreement in a representative capacit<br>isopacity Signature Discover (C.A.R. Form RCSD-S) for a<br>SELLER   | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harse/f as an individual. See altached<br>additional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>i (dato)at<br>Copy of Signed Acceptance is personally received by<br>confirmed in this document. Completion of this<br>i binding Agreement; it is solely intended to evidence |
| 2. ACCEPTANCE C<br>SoBer accepts th<br>continuation of a<br>Broker to Defiver<br>[] (If checked) SE<br>   | DF OFFER: Seller warrants that Solier is the owner of the<br>is above offer and agroes to sell the Property on the<br>gency relationships. Seller has read and acknowledger<br>a signed Copy to Buyer.  | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/herself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>at (dato)   |
| 2. ACCEPTANCE C<br>Seller accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>. One or more Self<br>Representative C<br>Date   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>SoBer accepts th<br>continuation of a<br>Broker to Defiver<br>[] (If checked) SE<br>   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED CO<br>bers is signing the Agreement in a representative capacit<br>capacity Signature Discover (C.A.R. Form RCSD-S) for a<br>SELLER  | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>Seller accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>. One or more Self<br>Representative C<br>Date<br>(Print name) <u>Darry!</u> (<br>Coale<br>(Print name)<br>(Print name)<br>(Print name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>Seller accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>. One or more Self<br>Representative C<br>Date<br>(Print name) <u>Darry!</u> (<br>Coale<br>(Print name)<br>(Print name)<br>(Print name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>Seler accepts the<br>continuation of a<br>Broker to Deliver<br>[] (if checked) SE<br>. One or more Self<br>Representative C<br>Date<br>(Print name) <u>Darry!</u> (<br>Oate)<br>[Print name)<br>(Print name)<br>[Print name]<br>[Content content of the second sec | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>Seller accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>. One or more Self<br>Representative C<br>Date<br>(Print name) <u>Darry!</u> (<br>Coale<br>(Print name)<br>(Print name)<br>(Print name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu   | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>Seller accepts the<br>continuation of a<br>Broker to Deliver<br>[] (If checked) SE<br>. One or more Self<br>Representative C<br>Date<br>(Print name) <u>Darry!</u> (<br>Coale<br>(Print name)<br>(Print name)<br>(Print name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu<br>() (D<br>Grint name)<br>[] Additional Signatu  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>Seler accepts the<br>continuation of a<br>Broker to Deliver<br>[] (if checked) SE<br>. One or more Self<br>Representative C<br>Date<br>(Print name) <u>Darry!</u> (<br>Oate)<br>[Print name)<br>(Print name)<br>[Print name]<br>[Content content of the second sec | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>Solor accepts th<br>continuation of a<br>Broker to Defiver<br>[] (if checked) SE<br>[] One or more Set<br>Representative C<br>bate<br>Print name) <u>Darry (</u><br>Date<br>Print name)<br>[ Additional Signate<br>(initials)<br>Broker Signate<br>(initials)  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |
| 2. ACCEPTANCE C<br>SeBer accepts th<br>continuation of a<br>Broker to Defiver<br>[] (If checked) SE<br>[] One or more Set<br>Representative C<br>Date<br>Print name) <u>Derry (C</u><br>Date<br>[Print name)<br>[Additionel Signatu<br>(Inituals)<br>Brint name)  | DF OFFER: Seller warrants that Seller is the owner of the<br>is above offer and agroes to sell the Property on the<br>igency relationships. Seller has read and acknowledger<br>a Signed Copy to Buyer.<br>ELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COntractions<br>is signing the Agreement in a representative capacity<br>is settler | Above terms and conditions, and agrees to the above<br>is receipt of a Copy of this Agreement, and authorizes<br>DUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:<br>y and not for him/harself as an individual. See altached<br>idditional terms.<br>N OF ACCEPTANCE: A Copy of Signed Acceptance was<br>in (doto)   |

warmen sam pro

. ۾ ا

١.

.

.

140

•4:

ł

Property Address: 6176 Federal Blvd, San Diogo, CA 92114-1401

Datu. March 21, 2017

দুষ প্ৰায় পাল্য প্ৰেৰ্ণা সং-

### REAL ESTATE BROKERS:

······

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
- B. Agency relationships are confirmed as stated in paragraph 2.

C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.

D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Setting Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrew, the amount specified in the MLS, provided Cooperhing Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sole, then compensation must be specified in a separate written agreement (CAR, Form CBC), Declaration of License and Tux (CAR, Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

| Roal Estate Broker (Selling | Firm) N/A |               | CalBRE Lie #  |
|-----------------------------|-----------|---------------|---------------|
| Βγ                          |           | CalBRE LL: #  | Dato          |
| By                          |           | CalBRE Lic. # | Date          |
| Accress                     |           | City          | State Zip     |
| Telephone "                 | Fox       | E-7588        |               |
| Real Estate Broker (Listing | Firm) N/A |               | CatBRE Lic. # |
| By                          |           | CalBRE Uc. #  | Onto          |
| 8y                          |           | CateRE Lis, # | Date          |
| Address                     |           | Слу           | State Zio     |
| Telephone                   | Fax       | E-mai         |               |
|                             |           |               |               |

| ESCROW HOLDER ACKNOWLEDGMENT:  |       |
|--|-------|
| Excroix Holder acknowledges receipt of a Copy of this Agreement, (if chocked | , 🗔 è |

| Escrew Holder acknowled  | ges receipt of a Copy of this Agreement, (if checked,ha Geposit in the amount of \$h  |
|--------------------------|---|
| countar afférinambers    | Seber's Statement of Information and  |
|                          | , and agrees to act as Excition Holder subject to paragraph 24 of this Agreement, any |
| supplemental escrow inst | uctions and the terms of Escrow Halder's general provisions                           |

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seter is\_

| Escrov H:200                                       |                                 | _ Escrow #<br>0310 | Destants uppering by the Almost Strate and Almost State Bally bit |
|--|---------------------------------|--------------------|---|
| Address  |                                 |                    |   |
| Prono-Fas/E-mail                                   |                                 |                    |   |
| Escrew Helder has the following Scense number #    |                                 |                    |   |
| Department of Business Oversight Department of Ins | aranco. [] Sureau & Roat Estato |                    |   |

) Listing Broker presented this after to Seller on \_ (date) PRESENTATION OF OFFER: ( Sroker or Casignee Includ

REJECTION OF OFFER: ( \_\_\_\_\_\_ ] No counter offer is being made. This offer was rejected by Seller on \_ (cate). Seller's Initials 1-X Buyers Initials ( X COIS, Catteria Association of REALTORSS, Inc. United States copyright law (Tate 17 U.S. Code) botton the unapported distribution, depthy and nonoduction of the home or by proton threed, by photocoly macrole of any other mains, including factorial or manufactorial kinade. This FORM HAS BEEN AFTROVED BY THE CALIFORNIA ASSOCIATION OF HEALTORSE (CAALL NO REPRESENTATION IS MADE AS TO THE LEGAL VALENTY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION A REAL ESTATE BROKEN IS THE PERSUAN CALLEFED TO AUVISE ON REAL ESTATE TRANSACTIONS, F YOU DESIRE LEGAL OR TAX ADVICE, CONSULTAN APPROPRIATE BROKEN IS THE PERSUAN CALLEFED TO AUVISE ON REAL ESTATE TRANSACTIONS, F YOU DESIRE LEGAL OR TAX ADVICE, CONSULTAN APPROPRIATE HOLD FEALTONIS A REAL ESTATE TRANSACTIONS, F YOU DESIRE LEGAL OR TAX ADVICE, CONSULTAN APPROPRIATE HOLD FEAL CONSULT ANADOLISE OF THE CALLOR SEA THE GOM IS THE ADVICE OF THE SEAL OF THE PERSON OF THE CALIFORNIA OF DECALES OF THE REAL FORMER OF THE CALIFORNIA ASSOCIATION OF REAL TOTAL TRANSACTIONS, F YOU DESIRE LEGAL OR TAX ADVICE, CONSULTAN APPROPRIATE HOLD FEAL CONSULT ANADOLISE OF THE CALIFORNICE OF THE CALIFORNIA OF THE CALIFORNIA ASSOCIATION OF THE CALIFORNIA AND THE CALIFORNIA ASSOCIATION OF THE CALIFORNIA AND THE CALIFORNIA AND THE CALIFORNIA ASSOCIATION OF REAL TOTALS OF THE CALIFORNIA AND THE ADVICE AND THE CALIFORNIA AND THE CALIFORNIA AND THE CALIFORNIA AND THE CALIFORNIA AND THE AND THE CALIFORNIA AND THE AND THE CALIFORNIA AND THE CALIFORNIA AND THE AND THE CALIFORNIA AND THE AND THE AND THE AND THE AND THE ADVICE AND THE ADVICE AND THE AND THE ADVICE AND THE wire mathempe to as Coop of Errica Published and Distributed by: REAL ESTATE BUSINESS STATE BUSINESS STATE BUSINESS STATE BUSINESS STATE BUSINESS CALIFORNIA ASSOCIATION STATES STATE BUSINESS CALIFORNIA SOCIAL STATES STATE BAGE 11 OF 11) Roviewes by Broker or Designee a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORSE CPA REVISED 12/15 (PAGE 11 OF 11) COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 11 OF 11) as wer and on salage that Fores whe Ries frage Longer High ant Lence were chose al Tal Judaral

| ADDITION      Second and a second a                              |  |  |   |  |
|---|--|--|---|--|
| ADDENDUM VP REFAUTORS ICAR FORM ADDR.Revised 12113 ICAR FORM ADDR.Revised ADDR.COMPASS AGREEMENT. [Procrements [Proceduated in used made a part of the]Procrements of Revised and Address agreement. [Interactor Obsciences addressered in the Address agreement. [Interactor Obsciences addressered in the Address agreement.] Interactor Obsciences and Conditions Interactor Interactor Obsciences addressered in the Addressered Interactor Interacto                            |  |  |   |  |
| ADDENDUM VP REFAUTORS ICAR FORM ADDR.Revised 12113 ICAR FORM ADDR.Revised ADDR.COMPASS AGREEMENT. [Procrements [Proceduated in used made a part of the]Procrements of Revised and Address agreement. [Interactor Obsciences addressered in the Address agreement. [Interactor Obsciences addressered in the Address agreement.] Interactor Obsciences and Conditions Interactor Interactor Obsciences addressered in the Addressered Interactor Interacto                            |  |  |   |  |
| ADDENDUM VP REFAUTORS ICAR FORM ADDR.Revised 12113 ICAR FORM ADDR.Revised ADDR.COMPASS AGREEMENT. [Procrements [Proceduated in used made a part of the]Procrements of Revised and Address agreement. [Interactor Obsciences addressered in the Address agreement. [Interactor Obsciences addressered in the Address agreement.] Interactor Obsciences and Conditions Interactor Interactor Obsciences addressered in the Addressered Interactor Interacto                            | •  |  |   |  |
| ADDENDUM VP REFAUTORS ICAR FORM ADDR.Revised 12113 ICAR FORM ADDR.Revised ADDR.COMPASS AGREEMENT. [Procrements [Proceduated in used made a part of the]Procrements of Revised and Address agreement. [Interactor Obsciences addressered in the Address agreement. [Interactor Obsciences addressered in the Address agreement.] Interactor Obsciences and Conditions Interactor Interactor Obsciences addressered in the Addressered Interactor Interacto                            | - 🔊 c  | ALTFORNTA  |   |  |
| OF REALTORS*       ICAR. Ferm ADM, Revised 1215       No. 1         The following terms and conditions are hereby incorporated in and made a part of thePrechase Agreement,Restrictual Lee to restore).   |  |  | ADDENDUM  |  |
| The following terms and conditions are hereby incorporated in and made a part of the. [] Parchase Agreement, [] Repricible 1 is or Month-D-Month Renal Agreement, [] Transfor Disclosure Statement (Most). An unrendment to the TDS may give the Bisyler e to a meaning [] Morch 21, 2017   |  | FREATTODS.   |   | No. 1  |
| be reasond. One:      determine the formation because a statement proof. An unrendment to the TDS may give the Beyer a     determine the formation of the form                         | •  |  | ·   | ······································   |
| daled       March 21, 2017       on property hown no.       6178 Feedural Divertion         In which       Richard John Martin II       is referred to as ("Buyniff and John Martin II"         and       Dairy Coffeen       is referred to as ("Buyniff and John Martin II"         Johd       Dairy Coffeen       is referred to as ("Buyniff and John Martin II"         Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.       Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.         Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.       Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.         Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.       Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.         Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.       Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.         Seller shall receive a 200% equity stake in the business / MMCC upon approval and complotion.       Seller shall be Seller's to keep even if the CUP application is denied.         The forogoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this occument.       Seller/Lanckedge receipt of a copy of this occument.         Date March 21, 2017       Date March 21, 2017       Date   |  | and the second  | aby incorporated in and made a part of the ransfer Disclosure Statement (Note: An am  | . Perchase Agréement, CResidential Leas<br>endment to the TDS may give the Boyer a rig   |
| In which  | dated /  | March 21, 2017   |   | C178 Endered Object  |
| In which  |  |  | San Diago CA 92114 1401   | 6176 Fadgrat Bivg  |
| Mamprandum of Understanding         This Mamerandum of Understanding ("MOU"] is hully incorporated into this purchash agreemont.         Selier shall receive a 20% equity stake in the business / MMCC upon approval and completion.         Soller shall receive a 20% equity stake in the business / MMCC upon approval and completion.         Soller shall receive a 20% equity stake in the business / MMCC upon approval and completion.         Soller shall receive a 20% equity stake in the business / MMCC upon approval and completion.         Soller shall receive a 20% equity stake in the business / MMCC upon approval and completion.         The S100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is denied.         The foregoing terms and conditions are hereby agreed 'c, and the undersigned acknowledge rocept of a copy of this document.         Date March 21, 2017       Date March 21, 2017         Buyer/Tenant       Scher/Landood X         Richarg/John Martin if       Scher/Landood X         Buyer/Tenant       Scher/Landood X         Net Stoll, Colonia Association of REALTORSE, included State copyoration of Examples in torostate and prove of any monoscient of the Algorithe Tenandood States copyoration of the Stoll prove of any copyorate of the Algorithe Tenandood States copyoration of accepter of a state of the Algorithe Tenandood States of the CUP copyoration of the CUP of   | - internet of  |  | Richard John Martin II  | is referred to as ('Buyer/Tenan  |
| This Memorandum of Understanding ("MOU") is fully incorporated into this purchase agreemont.         Selfer shall receive a 20% equity stake in the business / MMCC upon approval and completion.         Soller shall receive a 20% equity stake in the business / MMCC upon approval and completion.         Soller shall receive a 20% equity stake in the business / MMCC upon approval and completion.         Soller shall receive a number of the business / MMCC upon approval and completion.         The \$100,000 earnest money deposit is non-refundable and shall be Seller's to keep even if the CUP application is denied.         The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.         Date March 21, 2017       Date: March 21, 2017         Buyer/Tenant       Sclerr/Landord X         Buyer/Tenant       Sclerr/Landord X         Soller shall receive a state in the business of the state of the science to use strength deseators of the science to use strength deseators of the science to use strength of a copy of this document.         Date March 21, 2017       Date: March 21, 2017         Buyer/Tenant       Sclerr/Landord X         Buyer/Tenant       Sclerr/Landord X         Sclerr/Landord X       Sclerr/Landord X         Sclerr/Landord X       Sclerr/Landord X         Sclerr/Landord X       Sclerr/Landord X         Sclerr/Landord X       Sclerr/Landord X         Sclerr/Landord  | (010)  |  | Dairy Coffen  | is referred to as ("Selien/Landlord  |
| Saller shall receive a 20% equity stake in the business / MMCC upon approval and completion         Seller shall receive on a monthly basis, 20% of the profiles of the business / MMCC or \$10,000, whichever is greater.         The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is depied         The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is depied         The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.         Date March 21, 2017       Date March 21, 2017         Buyer/Tenant       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Buyer/Tenant       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd fortage in the Linger seller seller in the Seler in the Seler in the Seller in the Seller in the Seller in the S  |  |  | Memorandum of Understanding   |  |
| Saller shall receive a 20% equity stake in the business / MMCC upon approval and completion         Seller shall receive on a monthly basis, 20% of the profiles of the business / MMCC or \$10,000, whichever is greater.         The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is depied         The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is depied         The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.         Date March 21, 2017       Date March 21, 2017         Buyer/Tenant       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Buyer/Tenant       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd fortage in the Linger seller seller in the Seler in the Seler in the Seller in the Seller in the Seller in the S  |  | ······································   |   | ۵٬۰۰۰ ۲۰۰۰ ۲۰۰۰ ۲۰۰۰ ۲۰۰۰ ۲۰۰۰ ۲۰۰۰ ۲۰۰۰   |
| Saller shall receive a 20% equity stake in the business / MMCC upon approval and completion         Seller shall receive on a monthly basis, 20% of the profiles of the business / MMCC or \$10,000, whichever is greater.         The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is depied         The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is depied         The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.         Date March 21, 2017       Date March 21, 2017         Buyer/Tenant       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Buyer/Tenant       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd         Seller/Linckerd       Seller/Linckerd fortage in the Linger seller seller in the Seler in the Seler in the Seller in the Seller in the Seller in the S  | This Nameral   | ndum of Understanding (*N  | OU") Is fully incomprated into this purel   | 310-30000001   |
| Soller shall receive on a monthly basis, 20% of the profits of the business / MatGC or \$10,000, whichever is greater.         The \$100,000 earnest money depuisit is non-rolundable and shall be Soller's to koop even if the CUP application is denied.         The \$100,000 earnest money depuisit is non-rolundable and shall be Soller's to koop even if the CUP application is denied.         The foregoing larms and conditions are hereby agreed to, and the undersigned acknowledge roceipt of a copy of this document.         Date March 21, 2017         Buyer/Tenant         Sollerf, and the Undersigned acknowledge roceipt of a copy of this document.         Sollerf, and the Undersigned acknowledge roceipt of a copy of this document.         Buyer/Tenant         Sollerf, and the Undersigned acknowledge roceipt of a copy of this document.         Sollerf, and conditions are hereby agreed to, and the undersigned acknowledge roceipt of a copy of this document.         Buyer/Tenant       Sollerf, and conditions         Sollerf, and cold X       Sollerf, and cold X         Buyer/Tenant       Sollerf, and cold X         Sollerf, and cold X       Sollerf, and cold X         Sollerf, and cold X       Sollerf, and cold X         Sollerf, and cold X       Sollerf, and cold X         Buyer/Tenant       Sollerf, and cold X         Sollerf, and cold X       Sollerf, and cold X         Sollerf, andot X       Sollerf, and cold X  | -  |  |   |  |
| The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is denied.         The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is denied.         The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge "ocept of a copy of this document.         Date March 21, 2017         Buyer/Tenant X         Richard John Martin II         Buyer/Tenant X         Sclient, andood X         Richard John Martin II         Sclient, andood X         Date March 21, 2017         Date March 21, 2017 <t< td=""><td>Selier shall re</td><td>coive a 20% equity stake in</td><td>the business / MMCC upon approval an</td><td>d complotion.</td></t<>  | Selier shall re  | coive a 20% equity stake in  | the business / MMCC upon approval an  | d complotion.  |
| The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is denied.         The \$100,000 earnest money deposit is non-rofundable and shall be Seller's to keep even if the CUP application is denied.         The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge "ocept of a copy of this document.         Date March 21, 2017         Buyer/Tenant X         Richard John Martin II         Buyer/Tenant X         Sclient, andood X         Richard John Martin II         Sclient, andood X         Date March 21, 2017         Date March 21, 2017 <t< td=""><td>Soller shall n</td><td>rehe on a monthly back</td><td></td><td></td></t<>   | Soller shall n   | rehe on a monthly back   |   |  |
| The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge roceipt of a copy of this document. The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge roceipt of a copy of this document. Dato March 21, 2017 Dutc March 21,                          |  |  |   |  |
| The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge roceipt of a copy of this document. The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge roceipt of a copy of this document. Dato March 21, 2017 Dutc March 21,                          | The \$100,000  | earnest money deposit is r   | on-refundable and shall be Seller's to ke   | ep even if the CUP application is denied.  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   | 3 × 47   | and a second   | ـــــــــــــــــــــــــــــــــــــ   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   | <u> </u>   |  | de Alternation d'antimus d'antimus d'antimus de la constance de la constance de la constance de la constance de   | ana a a ana ana ana ana ana ana ana ana  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  |   | ······································   |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   | ·  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  | ······································   |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   | ·····  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   | ىمەرىپ - <del>بارتىمۇمۇمۇر</del> ۇر -  |  |   | ر 196 بالاس التي مواد هي الما المتحدين مستحد المحد الم   |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  | ······  |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   | <u> </u>   |  |   | na na antara da calendaria   |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  | ·  |   | -  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   | <del></del>  |  |   | and a state of the second s  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   | <del></del>  |  |   |  |
| Dato March 21, 2017       Dato March 21, 2017         Buyari Tenani X       Million Comparison         Richard John Martin II       Scher/Landlord X         Buyari Tenani X   |  |  | ـــــــــــــــــــــــــــــــــــــ   |  |
| Buyer/Tenant X       Richard John Martin II       Setter/Lanclord         Buyer/Tenant       Setter/Lanclord       Setter/Lanclord         Buyer/Tenant       Setter/Lanclord       Setter/Lanclord         O 1565-2015, Calonia Association of REALTORSE, Inc. United States expressions of conductive of the unastrained debearter, debear   | The foregoing  | terms and conditions are her   | reby agreed to, and the undersigned acknow  | viedge receipt of a copy of this occument.   |
| Buyer/Tenant X       Richard John Martin II       Setter/Lanclord         Buyer/Tenant       Setter/Lanclord       Setter/Lanclord         Buyer/Tenant       Setter/Lanclord       Setter/Lanclord         O 1565-2015, Calonia Association of REALTORSE, Inc. United States expressions of conductive of the unastrained debearter, debear   | Data March 1   | 2017   | Data Harak 1  | a man a Al   |
|   | URIO March Z   | 1, 2017  | Date March 2  | 1. 2011 All  |
|   | Buyer/Tenant   | States.  | Seter/Landlor   | ex Hull  |
| Buyer/Tenant       Seller/Lanclord         O 1565-2015, Calionia Association of REALTORSE, Inc. Linkos States compressible (File 17 U.S. Code) forders for unautomized debetwern, distay and repression is form, or any portion thered, by photocopy matrime trians, eclaring dependence forman.         THIS FORM HAS BEEL APPROVED BY THE CALFORNIA, ASSOCIATION OF REALTORSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL WAY ON ACCURACY OF ANY PROVIDED BY THE CALFORNIA, ASSOCIATION OF REAL ESSOCIATION OF REAL ESSOCIATION OF UNDERRECTED TO ADVISION IN ANY SPECIFIC TRANSACTION, A TAIL ESTATE BROWER IS THE PERSENDAL DRIVED TO ADVISION ON REAL ESSOCIATION OF REAL ESSOCIAL.         This form is made invalued by the cale professionals involued and device on a REAL TORSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL WAY ON ACCURACY OF ANY PROVINCE TO ADVISION OF REAL ESSOCIAL.         This form is made invalued estate professionals models in device on a REAL TORSE.         This form is made invalued to a repletened addeding maniferable mere when may be used only by members of the INTURE ASSOCIATION OF REAL IS the ESTATE BUSINESS SERVICER, B.C., a maniferable in the Cale of Efficient.         Image: Publiched and Databased by:       Real ESTATE BUSINESS SERVICER, B.C., a maniferable bit & Caura of Efficient.         Image: Publiched and Databased By:       Real Estate Distribution of REALTORSE (Legal of F 1).         Real ESTATE BUSINESS SERVICER, B.C., a maniferable bit (REALTORSE, CAR ), DR (REALE BALE), a SOCIATION OF REAL DATA ASSOCIATION OF REAL DATA (LINE DATA ASSOCIATION OF REAL DATA (LINE DATA ASSOCIATION OF A CALE), DR (LINE DATA ASSOCIATION OF REAL DATA (LINE DATA ASSOCIATION OF REAL DATA (LINE DATA ASSOCIATION OF REAL DATA (LINE DATA ASSOCIATION OF R  |  |  |   | DanaCotton   |
| O 1980-2015, California Association of REALTORSE, No. United States comprehense (Fige 17 U.S. Code) forders for unausweiged debetwoon, distring and reproduce<br>the form, or any portion thered, by photocopy (mathing to any other mathies, reducing factionals or conclusing first-and<br>this form, or any portion thered. By photocopy (mathing to any other mathies, reducing factionals or conclusing first-and<br>this form, or any portion thered. By photocopy (mathing to any other mathies, reducing factionals or conclusing first-and<br>this form, or any portion thered. By photocopy (mathing to any other mathies, reducing factionals or conclusing first-and<br>the form, or any portion thered. By photocopy (mathing to any other mathies, reducing factionals or conclusing first-and<br>the concerned of the second distribution of REAL to a first the profession of statistic or allowed on the fact to a second distribution of reactions in the other distribution of reactions in the professional association of an interface to be<br>the used as a statistic to real estate professionals involved and or purphase from the California Association of REAL to any second distribution of reaction of the first.<br>Public test as a fact to the concern first-and concerns of the first-and to the firs |  |  |   |  |
| Sis form, or any portion thered, by photocopy instituing is any other matrix, including distantle or conclusioned formany      This form and approved by The CALFORNIA ASSOCIATION OF REALTORSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      ON ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      ON ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      NA ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA A TEAL CARSE ON REAL ESC.      This team is node a valiable to real estate professionals involuping the professionals monor the California Association of REALTORSE, is not interempted to be control with the professional formation of the california Association of REALTORSE, is an interempted to be control with the professional formation of the california Association of REALTORSE, and the and baladated by:     REAL ESTATE BUSINESS SERVICES, B.C.     Alternation of a California REAL TORSE     STS South Virgl Avertae, Los Angeles, California BO229  ADM REVISED 12/15 (PAGE 1 OF 1)  | Subject Connet   | <u> </u>   | Selientandlor   | d  |
| Sis form, or any portion thered, by photocopy instituing is any other matrix, including distantle or conclusioned formany      This form and approved by The CALFORNIA ASSOCIATION OF REALTORSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      ON ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      ON ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      NA ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA A TEAL CARSE ON REAL ESC.      This team is node a valiable to real estate professionals involuping the professionals monor the California Association of REALTORSE, is not interempted to be control with the professional formation of the california Association of REALTORSE, is an interempted to be control with the professional formation of the california Association of REALTORSE, and the and baladated by:     REAL ESTATE BUSINESS SERVICES, B.C.     Alternation of a California REAL TORSE     STS South Virgl Avertae, Los Angeles, California BO229  ADM REVISED 12/15 (PAGE 1 OF 1)  | CCAGU S CREAM  |  |   |  |
| Sis form, or any portion thered, by photocopy instituing is any other matrix, including distantle or conclusioned formany      This form and approved by The CALFORNIA ASSOCIATION OF REALTORSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      On ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      ON ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      ON ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA, A TEAL CARSE (CAR ), NO REPRESENTATION IS MADE AS TO THE LEGAL VAL      NA ACCURACY OF ANY PROVISION IN ANY INSPECTION TAMASANTONIA A TEAL CARSE ON REAL ESC.      This team is node a valiable to real estate professionals involuping the professionals monor the California Association of REALTORSE, is not interempted to be control with the professional formation of the california Association of REALTORSE, is an interempted to be control with the professional formation of the california Association of REALTORSE, and the and baladated by:     REAL ESTATE BUSINESS SERVICES, B.C.     Alternation of a California REAL TORSE     STS South Virgl Avertae, Los Angeles, California BO229  ADM REVISED 12/15 (PAGE 1 OF 1)  | ocyda reinau   |  |   |  |
| THIS FORM HAS BEEN APPROVED BY THE CALFORNIA ASSOCIATION OF SEALTORSD (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VAL<br>OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION A REAL ESTATE BROKEN IS THE PERSON OFALTED TO ADVISE ON REAL EST<br>TRANSACTIONS IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSORIAL.<br>This form in sode wishing to real estate pressiones the provision of a California Association of REAL ESTATE BROKEN ED CONSULT. Association of REAL ESTATE BROKEN IS TO THE LEGAL VAL<br>the user as a REAL TONIN REALTORISE INCOME TO ADVICE, CONSULT AN APPROPRIATE PROFESSORIAL.<br>This form is sode wishing to real estate pressiones and advice munification maniformation from the California Association of REAL TORSE is an interence to the<br>allocated of the Calefornia Association of the advice munification maniformation and back and by new which may be used only by new back and be NATIONAL ASSOCIATION OF REAL<br>allocated to be Calefornia Association of REAL TORSE<br>a maniformy of the California Association of REAL TORSE<br>a maniformy of the California Association of REAL TORSE<br>ADM REVISED 12/15 (PAGE 3 OF 1)   | CCAGU S GERRIE   |  |   | and the second   |
| OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRUNSACTION, A TEAL ESTATE BROKER IS THE PERSON OBALIFIED TO ADVISE ON FEAL EST<br>TRUNSACTIONS IF YOU DESIRE LEGAL OR TAXADVICE, CONSULT AN APPROARIATE PROFESSIONAL.<br>This form is made invalues the projective provides an operative number of purphase from the California Association of REAL TORSE, is in an increased to it<br>is now as a REAL TORNE REAL TORSE, is an increased on an advisor of purphase from the California Association of REAL TORSE, is in an increased to it<br>also state and backeted by its projective numbership more which may be used only by numbers of the NATIONAL ASSOCIATION OF REALS<br>also state and Dairbacket by its<br>REAL ESTATE BUSINESS SERVICES, DIC.<br>a simultary of the California Association of REAL TORSE<br>ADM REVISED 12/15 (PAGE 3 OF 3)  | 0 1565-2015, Ca  |  |   |  |
| TRANSACTIONS IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form in resel available to real estate projection at an experience with or purphase from the Calibria Association of REALTORSE, it is not intermediate in a provide and the REALTORSE, it is not intermediate in a provide and Databased by: Published and Databased by: REAL ESTATE BUSINESS REPORTS, B.C., autobusy of 3% Calibrith Association of REALTORSE, B.C., autobusy of 3% Calibrithy Association of REALTORSE,                         | 0 1525-2015, Ca<br>Fús form, or any f  | portion thereof, by photocopy mathing  | at any other means, including tacalities or computenze  | a ferrats  |
| This form is made analysis are real estate projection is provided an appetend with or purphase from the California Association of REALTORSE, it is not knowned at the function of the function                        | © 1525-2015, Ca<br>705 form, or any p<br>THIS FORM HAS   | perion thereof, by photompy matting<br>5 BEEN APPROVED BY THE CALIF  | I DE ANY OCTOP MARKS, PERSON MALINE OF COMPLIANTO<br>ORMAX ASSOCIATION OF SEAL TORSE (CAR), NO  | CIERTAR<br>REPRESENTATION IS MADE AS TO THE LEGAE VALU   |
| Image: Star Star Star Star Star Star Star Star  | o 1965-2015, Ca<br>Tis Iont. of Eny I<br>This Form Has<br>or accuracy  | portion thereof. By diodocopy institution<br>5 BEEN APPROVED BY THE CALIF<br>I OF ANY PROVISION IN ANY SPE   | i di any oraș madris, podosog meninăle de composenze<br>Ornia, adsociation: of real-torse (C.A.R.). NO<br>difio truansaction, a real estate broner in   | CTEATATA<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>I THE PERSON OWNLITED TO ADVISE ON REAL ESTI   |
| Publisher and Distributed by:     REAL ESTATE BUSINESS REPORTED, D.C.     A STATE BUSINESS REPORTED, D.C.     STATE BUSINESS REPORTED, D.                             | o 1965-2014, Ca<br>Fid form, or any?<br>THIS FORM HAD<br>OR ACCURACY<br>TRAUSACTIONS<br>TOBIOTRIS 1936   | portion thered, by photomopy matrix<br>S SEEN APPROVED BY THE CALIF<br>CF ANY PROVISION IN ANY SPE<br>IF YOU DESIRE LEGAL OR TAX A<br>& available to neal estate professional  | I DE ANY GENE MASSES, FRANCING BEREINER OF COMPANYN<br>ORREA, ASSOCIATION OF REAL TORSE (C.A.R.). NO<br>EFFID THANSAUTION, A REAL EDIALE BRONER ID<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>IS INVOLO, DU SCHERMEN WIT OF DUTTALE PROFESSION<br>IS INVOLO, DU SCHERMEN WIT OF DUTTALE PROFESSION TO CAL   | C TERTAR<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>I THE PERSON OVALITED TO AIRVISE ON REAL EST<br>L.<br>L.<br>L. JOTTA ASSOCIATION OF REALTORS IN IN AN IMPROVE IN ISO   |
| REAL ESTATE BUSINESS REPORTES, D.G.     A SECTION OF THE ALLOCASION OF REAL TORISE     SECTION OF THE ALLOCASION OF REAL TORISE     Revened by  ADM REVISED 12/15 (PAGE 1 OF 1)   | O 1955-2015, Ca<br>Pip form, or any f<br>THIS FORM HAS<br>OR ACCURACY<br>TRAISACTIONS<br>This form is read<br>the over as a Ris  | porion thered, by photocopy mathim<br>5 SEEN APPROVED BY THE CALF<br>OF ANY PACUSION IN ANY SPE<br>5. IF YOU DESIRE LEGAL ON ANY SPE<br>5. IF YOU DESIRE LEGAL ON ANY SPE<br>5. IS YOU DESIRE LEGAL ON A TOPOLOGICAL<br>ALTOMIN REALLORS & A TOPOLOGICA  | I DE ANY GENE MASSES, FRANCING BEREINER OF COMPANYN<br>ORREA, ASSOCIATION OF REAL TORSE (C.A.R.). NO<br>EFFID THANSAUTION, A REAL EDIALE BRONER ID<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>IS INVOLO, DU SCHERMEN WIT OF DUTTALE PROFESSION<br>IS INVOLO, DU SCHERMEN WIT OF DUTTALE PROFESSION TO CAL   | C TERTAR<br>REPRESENTATION IS MADE AS TO THE LEGAL VALE<br>5 THE PERSON OVALITED TO AIRVISE ON REAL EST<br>L.<br>10-13-14 ANNOUNCE REALTORISM IS AN IMMONOR IN BO  |
| ADM REVISED 12/15 (PAGE 1 OF 1)   | O ISECIONA, Ca<br>Fils form, or any p<br>Phils FORM HAS<br>OR ACOURACY<br>TRANSACTIONS<br>This form is not<br>fine use as a Re-<br>alize velocitie to  | perion thered, by photocopy instition<br>5 SEEN APPROVED BY THE CALF<br>OF ANY PARTISION IN ANY SPE<br>5 IF YOU DESIRE LEGAL OR TAX A<br>4 Institution for real estate professional<br>AL TOMME REAL (DOPO) as a regulation<br>As Cours of Epison.   | I DE ANY GENE MASSES, FRANCING BEREINER OF COMPANYN<br>ORREA, ASSOCIATION OF REAL TORSE (C.A.R.). NO<br>EFFID THANSAUTION, A REAL EDIALE BRONER ID<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>IS INVOLO, DU SCHERMEN WIT OF DUTTALE PROFESSION<br>IS INVOLO, DU SCHERMEN WIT OF DUTTALE PROFESSION TO CAL   | C TERTAR<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>I THE PERSON OVALITED TO ADVISE ON REAL ESTI<br>L.<br>L.<br>L. JOTTA ASSOCIATION OF REALTORS OF REACTION OF THE  |
| ADM REVISED 12/15 (PAGE 1 OF 1)   | O 1520-2015, Ca<br>Pis form or any<br>PHIS FORM HAC<br>OR ACCURACY<br>IRANSACTIONS<br>Insistantia race<br>and statements in<br>allo statements<br>allo | portion thereof, by photocopy institution<br>5 BEEN APPROVED BY THE CALIF<br>CF ANY PROVISION IN ANY SPE<br>8 IF YOU DESIRE LEGAL OR TAXA<br>6 In YOU DESIRE TO TAXA<br>6 IN YOU DESIRE TO TAXA<br>10 COLOR OF FDIAL.<br>10 COLOR OF FDIAL.   | I DE ANY CETAL MARTE, FRANCING MARENDIA DE COMPUNITIO<br>ORIER, ASSOCIATION OF REAL TORDE (CAR), RO<br>DEFED TRANSAUTION, A REAL ESTATE BROWER (C<br>DIVICE, CONSULT AN APPROPRIATE PROFESSION<br>IS Include an appreciment with or purplace from the Cal<br>collicities municipating mark which may be used only b   | C TERTAR<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>I THE PERSON OVALITED TO ADVISE ON REAL ESTI<br>L.<br>L.<br>L. JOTTA ASSOCIATION OF REALTORS OF REACTION OF THE  |
|   | O ISÉCIOLÉ, Ca<br>Fús form, or any f<br>Hris FORU HUZ<br>OR ACOURACY<br>TRAUSACIONS<br>Das facto is casa<br>Dim over as a Réh<br>also state facto<br>Publiche<br>C Publiche<br>C ALCOURT C   | perion thered, by photocopy instition<br>S BEEN APPROVED BY THE CALIF<br>CF ANY PROVISION IN ANY SPEC<br>F YOU DESIRE LEGAL OR TAX A<br>is a subsystement of the state professional<br>ALTOHOF REVILLIGHTON a regulational<br>ALTOHOF REVILLIGHTON a regulational<br>ALCOMOR REVILLIGHTON a regulational<br>ALCOMOR REVILLIGHTON A regulation<br>at and Data Data State State State<br>STATE BUSINESS RERVICES, B/C,<br>STATE BUSINESS RERVICES, B/C,  | I DE ANY CONSTRUCTOR DECEMBE OF COMPLEXITY<br>ORDER, ASSOCIATION OF REALTARS (CAR), NO<br>ORDER, ASSOCIATION OF REALTARS (CAR), NO<br>ORDER, OCISULT AN APPROPRIATE PROFESSION<br>IS INCOMENT. AN APPROPRIATE PROFESSION<br>IS INCOMENTAL AND APPROPRIATE PROFESSION<br>IS INCOMENTATION OF DECEMBER OF DECEMBER<br>OF CONSTRUCTION OF DECEMBER OF DECEMBER<br>(DECEMPTION OF DECEMBER OF DECEMBER OF DECEMBER OF DECEMBER<br>(DECEMPTION OF DECEMBER OF DECEMBER OF DECEMBER OF DECEMBER OF DECEMBER<br>(DECEMPTION OF DECEMBER OF | C TERTATION IS MADE AS TO THE LEGAL VALUE<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN THE PERSON OUALITIED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORISE, it is not intended to be<br>y number at the INATIONAL ASSOCIATION OF REALTOR         |
| ADDENDUM (ADM PAGE 1 OF 1)  | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>mutant as a RA-<br>align statement of the<br>Phateament<br>Comparison of the<br>STS factors  | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ANY CONSTRUCTOR DECEMBE OF COMPLEXITY<br>ORDER, ASSOCIATION OF REALTARS (CAR), NO<br>ORDER, ASSOCIATION OF REALTARS (CAR), NO<br>ORDER, OCISULT AN APPROPRIATE PROFESSION<br>IS INCOMENT. AN APPROPRIATE PROFESSION<br>IS INCOMENTAL AND APPROPRIATE PROFESSION<br>IS INCOMENTATION OF DECEMBER OF DECEMBER<br>OF CONSTRUCTION OF DECEMBER OF DECEMBER<br>(DECEMPTION OF DECEMBER OF DECEMBER OF DECEMBER OF DECEMBER<br>(DECEMPTION OF DECEMBER OF DECEMBER OF DECEMBER OF DECEMBER OF DECEMBER<br>(DECEMPTION OF DECEMBER OF | CTERTATION IS MADE AS TO THE LEGAL VALUE<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN THE PERSON QUALIFIED TO ADVISE ON REAL EST<br>L<br>Intra Association of REALTORISE, It is not intended in its<br>promotion of the Institution Association of REALTOR<br>C |
|   | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>mutant as a RA-<br>align statement of the<br>Phateament<br>Comparison of the<br>STS factors  | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ATY CODE DALES, POLICING SUBJER & COMPLIANDO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>Is moving a subject of purphase from the Cal<br>colouling municipality over which may be used only b<br>REALTORSE<br>Is 190220   | CTERTION<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN THE PERSON OUALITIED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORIOS, it is not intended to be<br>y numbers of the Institution, Association of REALTOR<br>(                                 |
|   | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>minute data for the<br>Publishing<br>Construction of the<br>Publishing<br>Construction of the<br>STS factors   | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ATY CODE DALES, POLICING SUBJER & COMPLIANDO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>Is moving a subject of purphase from the Cal<br>colouling municipality over which may be used only b<br>REALTORSE<br>Is 190220   | CTERTION<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN THE PERSON OUALITIED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORIOS, it is not intended to be<br>y numbers of the Institution, Association of REALTOR<br>(                                 |
|   | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>minute data for the<br>Publishing<br>Construction of the<br>Publishing<br>Construction of the<br>STS factors   | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ATY CODE DALES, POLICING SUBJER & COMPLIANDO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>Is moving a subject of purphase from the Cal<br>colouling municipality over which may be used only b<br>REALTORSE<br>Is 190220   | CTERTION<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN THE PERSON OUALITIED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORIOS, it is not intended to be<br>y numbers of the Institution, Association of REALTOR<br>(                                 |
|   | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>minute data for the<br>Publishing<br>Construction of the<br>Publishing<br>Construction of the<br>STS factors   | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ATY CODE DALES, POLICING SUBJER & COMPLIANDO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>Is moving a subject of purphase from the Cal<br>colouling municipality over which may be used only b<br>REALTORSE<br>Is 190220   | CTERTION<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN THE PERSON OUALITIED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORIOS, it is not intended to be<br>y numbers of the Institution, Association of REALTOR<br>(                                 |
|   | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>minute data for the<br>Publishing<br>Construction of the<br>Publishing<br>Construction of the<br>STS factors   | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ATY CODE DALES, POLICING SUBJER & COMPLIANDO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>Is moving a subject of purphase from the Cal<br>colouling municipality over which may be used only b<br>REALTORSE<br>Is 190220   | C TERTATION IS MADE AS TO THE LEGAL VALUE<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN THE PERSON OUALITIED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORISE, it is not intended to be<br>y number at the INATIONAL ASSOCIATION OF REALTOR         |
|   | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>minute data for the<br>Publishing<br>Construction of the<br>Publishing<br>Construction of the<br>STS factors   | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ATY CODE DALES, POLICING SUBJER & COMPLIANDO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>Is moving a subject of purphase from the Cal<br>colouling municipality over which may be used only b<br>REALTORSE<br>Is 190220   | C TERTATION IS MADE AS TO THE LEGAL VALUE<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IS THE PERSON OUNLITED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORISE, it is not intended to ideal<br>y numbers of the INATIONAL ASSOCIATION OF REALTOR      |
| F   | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>minute data for the<br>Publishing<br>Construction of the<br>Publishing<br>Construction of the<br>STS factors   | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ATY CODE DALES, POLICING SUBJER & COMPLIANDO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>ORREA, ASSOCIATION OF REALTORS (CAR), NO<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>Is moving a subject of purphase from the Cal<br>colouling municipality over which may be used only b<br>REALTORSE<br>Is 190220   | CTERTATION IS MADE AS TO THE LEGAL VALUE<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN A PERSON OUALITIED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORISE, it is not intended to be<br>y number at the INATIONAL ASSOCIATION OF REALTOR<br>C       |
|   | O 1565/2015, Ca<br>Pip form, or any's<br>Hills FORU HAZ<br>OR ACOURACY<br>TRATSACTIONS<br>This farm is read-<br>the form the read-<br>minute data for the<br>Publishing<br>Construction of the<br>Publishing<br>Construction of the<br>STS factors   | portion thered, by photocopy mathing<br>S BEEN APPROVED BY THE CALF<br>CF ANY PARTISICAL IN ANY SPEE<br>8 IF YOU DESIRE LEGAL OR TAX A<br>2 IN YOU DESIRE LEGAL OR TAX<br>2 IN YOU DESIRE LEGA | I DE ATY CONSTITUENTS, FOLICOG SACLENDE OF COMPLETING<br>ORREA, ASSOCIATION OF REAL TORAL (CARL), NO<br>ORREA, ASSOCIATION A REAL ESTATE DRONER IS<br>DVICE, CONSULT AN APPROPRIATE PROFESSION<br>Is provide an apprendict with of purpless from the Cal<br>confourth numbership over which may be used only b<br>IEAL TORSE<br>IS 80020<br>Revenued byD<br>ADDENDUM (ADM PAGE 1 OF 1)  | C TERTATION IS MADE AS TO THE LEGAL VALUE<br>REPRESENTATION IS MADE AS TO THE LEGAL VALUE<br>IN THE PERSON OUALITIED TO ADVISE ON REAL EST<br>L<br>Lotta Association of REALTORISE, it is not intended to be<br>y number at the INATIONAL ASSOCIATION OF REALTOR         |

| •  |  |
|--|--|
| A CALIFORNIA   |  |
|  | DENDUM   |
| OF REALTORS* ICAR. Form  | ADM, Rovised 12/15) No. 2  |
| ne following terms and conditions are hereby incorporated in<br>Month-both Rental Agreement, Transfer Disclosure<br>rescind). Other  | and made a part of the: $\overline{X}$ Purchase Agreement. [] Residential Lease Statement (Note: An amendment to the TDS may give the Buyer a right  |
| March 21, 2017 . on property known 38  | 617G Federal Blvd  |
| which Richard John Man   | tin ii is releared to as ("Buverflement")  |
| Darry/ Cotton  | is related to as (Selectunders).   |
| Memorandum of Unde   | rstanding and Agreement  |
|  | MOUA") amends the agreement reached by Buyer and Seller on   |
| srch 21, 2017.   |  |
| Notwithstanding any language in this purchase agreem   | ent to the contrary, the provisions within this MOUA shall be given  |
| Heat and supersede any conflicting or ambiguous langus<br>Soller hereby transfers and solls to Buyer, with all the a   | ige within this purchase agreement.<br>ssociated rights and liabilities, his ownership, rights and interests   |
| ) the property and the associated CUP application pendir   | to before the City of San Diego for \$500,000.   |
| Buyer shall immediately provide seller with a \$50,000 n   | on-refundable deposit.<br>alance of the purchase price and all the requirements stated herein,   |
| hall be completed upon the favorable resolution of the Li  | In Geraci lawsuit anainst Seller for the property  |
| In addition, should a CUP application be approved at th  | e property, Buyer shall pay Seller a one-time payment of \$1,500,000.<br>Iness is volded and Seller has no interest in the property or the   |
| UP.  |  |
| CONFIDENTIALITY CLAUSE: SELLER WILL NOT DISCL  | OSE BUYER'S IDENTITY OR THIS AGREEMENT IN ANY FORM,  |
| OUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE  | HE LEGAL ACTION WITH GERACI. FOR THE AVOIDANCE OF<br>OR MENTION BUYER IN ANY FORM TO ANY THIRD-PARTIES, IN   |
| NY LITIGATION PROCEEDINGS OR IN ANY MATTERS R.   | EGARDING ALLEGATIONS OF CRIMINAL OR UNLAWFUL ACTIONS.  |
| HOULD SELLER BREACH THIS PROVISION, SELLER HE  | REBY EXPRESSLY AGREES TO PAY TO BUYER \$200,000 FOR  |
|  |  |
| REACH OF THIS PROVISION.   |  |
| REACH OF THIS PROVISION.   |  |
|  | i the undersigned acknowledge recolpt of a cody of this document.  |
| The foregoing terms and conditions are zereby agreed to, and Data April 15, 2017   |  |
| The foregoing terms and conditions are zereby agreed to, and bato April 15, 2017   | d the undersigned licknowledge receipt of a copy of this document.<br>Colo April 15, 2017  |
| The foregoing terms and conditions are hereby agreed to, and bato April 15, 2017<br>Buygr/Tonant X   | I the undersigned acknowledge receipt of a copy of this document.  |
| The foregoing terms and conditions are increby agreed to, and<br>Dato <u>April 15, 2017</u><br>Buyer/Tonant X. <u>M. Martin H</u>  | d the undersigned acknowledge receipt of a cepy of this document.<br>Cale April 15, 2017<br>SellerriLangkord X. April Cotton   |
| the foregoing terms and conditions are increby agreed to, and<br>bate <u>April 15, 2017</u><br>Buyer/Tonant X. <u>M. Martin II</u><br>Richard John Martin II   | i the undersigned acknowledge receipt of a copy of this document.<br>Colo <u>April 15, 2017</u><br>SelliyriLandkiroX.  |
| The foregoing terms and conditions are increby agreed to, and Dato <u>April 15, 2017</u> Buyor/Tonant X <u>Richard John Martin II</u> Buyer/Tonant X <u>Richard John Martin II</u> Buyer/Tenant <u>Association of REALTORSE, inc. Unled Bures top</u> In Som, or any portion thereat, by photocopy machine or any other mean, we thus FORM that BEEN ANTROVED BY THE CALIFORNIA ADSOCIATION BR ACCURACY OF ANY PROVISION IN ANY SPECIAL CONSULT ANALOUTION IN THIS FORM that BEEN ANTROVED BY THE CALIFORNIA ADSOCIATION BR ACCURACY OF ANY PROVISION IN ANY SPECIAL CONSULT ANALOUTION IN THIS FORM that BEEN ANTROVED BY THE CALIFORNIA ADSOCIATION BR ACCURACY OF ANY PROVISION IN ANY SPECIAL CONSULT ANALOUTION IN THIS FORM that BEEN ANTROVED BY THE CALIFORNIA ADSOCIATION INS form is made available to real estate problemations through an agreement was as a SECALTORS, REAL CONSULT AND ADDITION IN A REAL CONSULT AND ADDITION IN A REAL CONSULT AND ADDITION AND ADDITION AND ADDITION AND ADDITION AND ADDITION AND ADDITIONAL ADDITION AND ADDITION AND ANY SPECIAL CONSULT AND ADDITION AND ANY SPECIAL CONSULTANT AND ADDITIONAL A   | I the undersigned acknowledge receipt of a copy of this document.<br>Eald <u>April 15, 2017</u><br>Seller/Landkow April Conton<br>Seller/Landkow April Conton<br>Seller/Landko  |
| The foregoing terms and conditions are increby agreed to, and<br>bato April 15, 2017<br>Buyer/Tonant X<br>Richard John Martin II<br>Buyer/Tonant X<br>Richard John Martin II<br>Buyer/Tonant<br>I 1985-2015, Cellonia Association of REALTORSE, inc. Unled States app<br>in tam, or any borken therest, by pholocopy machine or any other means, in<br>his Form rase Been AttROVED BY THE CALFORNIA ACCOUNTION<br>RACCURACY OF ANY PROVIDED BY THE CALFORNIA ACCOUNTION<br>RANSACTIONS, IF YOU DESIRCILEGAL OR TAX ADVICE, CONSULT ANY<br>Inst store is made available to real evides providered collective particle and<br>to use as a FEALTORS, REALTORS is a regulated collective particle and<br>to use as a FEALTORS, REALTORS is a regulated collective particle and<br>to use as a FEALTORS, REALTORS is a regulated collective particle and<br>to use as a FEALTORS, REALTORS is a regulated collective particle and<br>to use as a FEALTORS, REALTORS is a regulated collective particle and<br>to use as a FEALTORS, REALTORS is a regulated collective particle and<br>to use as a fEALTORS and the available of the collective particle and<br>to use as a fEALTORS and the available of the available of the collective particle and<br>to use as a fEALTORS and the available of the collective particle and<br>the available of the Calfornia Association of HEALTORS and<br>statistically of the Calfornia Association of HEALTORS available<br>to the collective particle available of the collective particle of the collective particle available of the collective particle available of the collective particle of the collective p   | I the undersigned acknowledge receipt of a copy of this document.<br>Cale April 15, 2017<br>SelleriLandkrotx<br>SelleriLandkrotx<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>SelleriLandkrot<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Selleri<br>Sell |
| he foregoing terms and conditions are itereby agreed to, and<br>bate <u>April 15, 2017</u><br>huyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X.<br><u>Richard John Martin H</u><br>Buyer/Tonant<br>Internet State of the set by physicopy machine or any other mean, we<br>has Section the set by physicopy machine or any other mean, we<br>has Section is a set of the set by physicopy machine or any other mean, we<br>has Section is the set by physicopy machine or any other mean, we<br>has sections. If your DESIR-IEGAL OR TAK DURCE COURSULT<br>has sections in the deal for the state procession as strongh an agreement<br>we use as a SEALTORD, REALTORD is a required collective partition the<br>set of the deal Elevies a section of fight TORSO<br>state and the California Association of fight TORSO<br>state and the California Association of fight TORSO<br>state Section of the California Collocation<br>ADM REVISED 12/15 (PAGE 1 OF 1)   | I the undersigned acknowledge receipt of a copy of this document.  Eald April 15, 2017  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord  Total Encode a the undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation  SolleriLandkord  Total Encode a the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  Total Encode at the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution  Total Encode at the soluti  |
| he foregoing terms and conditions are itereby agreed to, and<br>bate <u>April 15, 2017</u><br>huyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X.<br><u>Richard John Martin H</u><br>Buyer/Tonant<br>Internet State of the set by physicopy machine or any other mean, we<br>has Section the set by physicopy machine or any other mean, we<br>has Section is a set of the set by physicopy machine or any other mean, we<br>has Section is the set by physicopy machine or any other mean, we<br>has sections. If your DESIR-IEGAL OR TAK DURCE COURSULT<br>has sections in the deal for the state procession as strongh an agreement<br>we use as a SEALTORD, REALTORD is a required collective partition the<br>set of the deal Elevies a section of fight TORSO<br>state and the California Association of fight TORSO<br>state and the California Association of fight TORSO<br>state Section of the California Collocation<br>ADM REVISED 12/15 (PAGE 1 OF 1)   | I the undersigned acknowledge receipt of a copy of this document.<br>Eald <u>April 15, 2017</u><br>Seller/Landkow April Conton<br>Seller/Landkow April Conton<br>Seller/Landko  |
| he foregoing terms and conditions are itereby agreed to, and<br>bate <u>April 15, 2017</u><br>huyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X.<br><u>Richard John Martin H</u><br>Buyer/Tonant<br>Internet State of the set by physicopy machine or any other mean, we<br>has Section the set by physicopy machine or any other mean, we<br>has Section is a set of the set by physicopy machine or any other mean, we<br>has Section is the set by physicopy machine or any other mean, we<br>has sections. If your DESIR-IEGAL OR TAK DURCE COURSULT<br>has sections in the deal for the state procession as strongh an agreement<br>we use as a SEALTORD, REALTORD is a required collective partition the<br>set of the deal Elevies a section of fight TORSO<br>state and the California Association of fight TORSO<br>state and the California Association of fight TORSO<br>state Section of the California Collocation<br>ADM REVISED 12/15 (PAGE 1 OF 1)   | I the undersigned acknowledge receipt of a copy of this document.  Eald April 15, 2017  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord  Total Encode a the undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation  SolleriLandkord  Total Encode a the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  Total Encode at the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution  Total Encode at the soluti  |
| he foregoing terms and conditions are itereby agreed to, and<br>bate <u>April 15, 2017</u><br>huyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X. <u>Martin H</u><br>Buyer/Tonant X.<br><u>Richard John Martin H</u><br>Buyer/Tonant<br>Internet State of the set by physicopy machine or any other mean, we<br>has Section the set by physicopy machine or any other mean, we<br>has Section is a set of the set by physicopy machine or any other mean, we<br>has Section is the set by physicopy machine or any other mean, we<br>has sections. If your DESIR-IEGAL OR TAK DURCE COURSULT<br>has sections in the deal for the state procession as strongh an agreement<br>we use as a SEALTORD, REALTORD is a required collective partition the<br>set of the deal Elevies a section of fight TORSO<br>state and the California Association of fight TORSO<br>state and the California Association of fight TORSO<br>state Section of the California Collocation<br>ADM REVISED 12/15 (PAGE 1 OF 1)   | I the undersigned acknowledge receipt of a copy of this document.  Eald April 15, 2017  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord  Total Encode a the undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation  SolleriLandkord  Total Encode a the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  Total Encode at the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution  Total Encode at the soluti  |
| The foregoing terms and conditions are itereby agreed to, and<br>bate April 15, 2017<br>Auger/Tonant X<br>Richard John Martin II<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Bu | I the undersigned acknowledge receipt of a copy of this document.  Eald April 15, 2017  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord  Total Encode a the undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation  SolleriLandkord  Total Encode a the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  Total Encode at the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution  Total Encode at the soluti  |
| The foregoing terms and conditions are itereby agreed to, and<br>bate April 15, 2017<br>Auger/Tonant X<br>Richard John Martin II<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Buyer/Tenant<br>Bu | I the undersigned acknowledge receipt of a copy of this document.  Eald April 15, 2017  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord X  April Conton  SolleriLandkord  Total Encode a the undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation for undertailed astrontics, datay and reported for a  SolleriLandkord  Total Encode a computation  SolleriLandkord  Total Encode a the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  SolleriLandkord  Total Encode at the presence of the solution of the solution  Total Encode at the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution of the solution  Total Encode at the solution of the solution of the solution  Total Encode at the soluti  |

4

| CALIFORNIA   |  |  |   |
|--|--|--|---|
| ASSOCIATION  | ADDENDUM   |  |   |
| OF REALTORS CAR  | L Form ADM, Revised 12/15)   | No. <u>3</u>   | · <u>···································</u>                                |
| The lettowing terms and conditions are hereby incorport<br>or Month-to-Month Rental Agreement, [] Transfer Disi<br>to resolud). [] Other   | Costre Statement (Note: An am  | Purchase Agreement, [] Rese<br>codment to the TDS may give the   | dential Lease<br>Buyur a rìght  |
| datad Merch 21, 2017 on propurty know  | swn as<br><u>Ian Diego, CA 92114-1401</u>  | 6176 Federal Blvd  | ······································                                      |
| Richard Jo   | hn Martin'li   | is referred to as ("B  | nur/lonat   |
| ond Darryl Co  | llon   | is moned to as ("Seli  | ar/Land/ord*j.  |
| This addendum is fully incorporated into this purch<br>on March 21, 2017, as amonded by addendum 2 on  | ase agreement and amends th<br>April 15th, 2017.   | • agreement reached between th   | e parties   |
| Buyer hereby agrees to permit Seller to disclose th  | ls agreement in his rosponse t   | p Goraci's lawsuit   |   |
|  |  |  |   |
| For the avoidance of doubt, Seller will not have to p<br>agreed to.  | pay the \$200,000 fine for breac   | h of the Confidentiality provision   | proviously  |
| the second s   |  |  |   |
|  | بيهيئهم اليرية الاكان المهليك مستبد متلكم  |  |   |
|  |  |  |   |
| د مستحد ما ما هذه المستحد من من ما الما من من ما الما من من من ما ما ما من br>مراجع مستحد من   |  |  |   |
|  |  | ······································   |   |
|  |  | and a second   |   |
|  |  |  |   |
|  | anan anang manang manang ter sebahan pang arang arang manang menang menang menang menang menang menang menang m<br>Menang menang   | and the second   | 1 <del></del>   |
|  |  | ny an a <mark>ny any analana analana any analana any analana amin' ana ana ana ana ana ana ana ana ana a</mark>  |   |
|  | ·····  | · •••••  |   |
| and a second   | ى  |  | • • • • • • • • • • • • • • • • • • •                                       |
|  |  | ۲۰۰۰ م.<br>۱۹۹۹ - ۲۰۰۰ م. اور استور با ۱۹۹۹ - ۲۰۰۰ میلود استان اور   |   |
|  |  | · · · · · · · · · · · · · · · · · · ·  |   |
| · · · · · · · · · · · · · · · · · · ·  | · · · · · · · · · · · · · · · · · · ·  | ·····,   |   |
|  |  |  |   |
|  |  |  |   |
|  |  |  |   |
| The foreacies terms and conditions the humby accerd  | The second state second |  |   |
| The foregoing terms and conditions are hereby agreed   | I to, and the undersigned acknow   | ledge receipt of a copy of this docu   | ment  |
| The foregoing terms and conditions (tre hereby agreed<br>Date <u>May 12, 2017</u>  | I to, and the undersigned acknow<br>Date <u>May 12</u> ,   | Dall   | ment  |
| Date May 12, 2017  | Date May 12,   | 2017 Miles   | ment.   |
| Date May 12, 2017<br>Buyer/Tenant X Mill Pater   |  | 2017 Miles   | ment  |
| Date May 12, 2017<br>Buyer/Tenant X<br>Richard Joyn Martin II  | Date <u>May 12,</u><br>Seller/Londier  |  | ment.   |
| Date May 12, 2017<br>Buyer/Tenant X Mill Pater   | Date May 12,   |  | meni.   |
| Date May 12, 2017<br>Buyer/Tenant X<br>Richard Joyn Martin II  | Date <u>May 12,</u><br>Seller/Londier  | 2017 Milenten  | ment.   |
| Date May 12, 2017<br>Buyer/Tenant X<br>Richard Joyn Martin II<br>Buyer/Tenant  | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor  |  |   |
| Date May 12, 2017<br>Buyer/Tenant X Richard John Martin II<br>Buyer/Tenant   | Date <u>May 12,</u><br>Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>alos copyrohitary (Ton 17 U.S. Coth) for<br>means, including bacimile or on typicrited   | 2017 All   |   |
| Date May 12, 2017 Buyer/Tenant X   | Date <u>May 12,</u><br>Seller/Landlord<br>Seller/Landlord<br>Nos cognicit: Inv (Ten 17 U.S. Coth) for<br>mans, including becimile or entry forced<br>CMANIO OF REALTORSA (CAR) NO<br>CMANIO OF REALTORSA (CAR) NO  | 2017<br>A<br>Density Cotton<br>d<br>Density Cotton<br>d<br>D<br>D<br>D<br>D<br>D<br>D<br>D<br>D<br>D<br>D<br>D<br>D<br>D | vi /epinóscian n/<br>16CA, VALE/Y/  |
| Date May 12, 2017 Buyer/Tenant X Richard John Martin II Buyer/Tenant C 1944-2015, Calibraia According of REALTORS A, Inc. Unlos Sta<br>bis form, or any portion Barried by photocoly marting or any offent<br>This Form MAS BEEN APPROVED BY THE CALIFORNIA ASSO<br>OR ACCURACY OF ANY PROVISION BI ANY SPECIFIC TRANS<br>(RANSAGTIONS, & YOU DESIRE LEGAL OR TAX ADVICE, CONS.  | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Man cognight law (Ten 17 U.S. Gow) for<br>mans, including basinitie or or try-forder<br>Cartlell or REALIDES/ (CAR) MO<br>ACTION A REAL ESTATE BRONER IS<br>ULT AN APPROPRIATE PROPESSION   | 2017<br>A<br>Derry/Cotton<br>t<br>Chick the unautorized thereating, deploy as<br>Remain<br>REPRESENTATION IS MADE AS TO THE<br>THE PERSON QUALIFIED TO ADVISE O<br>THE PERSON QUALIFIED TO ADVISE O<br>THE PERSON QUALIFIED TO ADVISE O  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X   | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Man cognight law (Ten 17 U.S. Gow) for<br>mans, including basinitie or or try-forder<br>Cartlell or REALIDES/ (CAR) MO<br>ACTION A REAL ESTATE BRONER IS<br>ULT AN APPROPRIATE PROPESSION   | 2017<br>A<br>Derry/Cotton<br>t<br>Chick the unautorized thereating, deploy as<br>Remain<br>REPRESENTATION IS MADE AS TO THE<br>THE PERSON QUALIFIED TO ADVISE O<br>THE PERSON QUALIFIED TO ADVISE O<br>THE PERSON QUALIFIED TO ADVISE O  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X Richard John Martin II Buyer/Tenant C 1944.2015, Calibrais According of REALTORSH, Inc. Unlos 5: this form of any option based by photocoly machine or any other real standard MAS BEEN APPROVED BY THE CALIFORNIA ASSO OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANS IRANISACTIONS, F YOU DESIRE LEGAL OR TAX ADVICE. CONS Ins form in add and table to the calific protocond collective may who substrate to be Calif.  Photograph Databased by:   | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Man cognight law (Ten 17 U.S. Gow) for<br>mans, including basinitie or or try-forder<br>Cartlell or REALIDES/ (CAR) MO<br>ACTION A REAL ESTATE BRONER IS<br>ULT AN APPROPRIATE PROPESSION   | 2017<br>A<br>Derry/Cotton<br>t<br>Chick the unautorized thereating, deploy as<br>Remain<br>REPRESENTATION IS MADE AS TO THE<br>THE PERSON QUALIFIED TO ADVISE O<br>THE PERSON QUALIFIED TO ADVISE O<br>THE PERSON QUALIFIED TO ADVISE O  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X   | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Man cognight law (Ten 17 U.S. Gow) for<br>mans, including basinitie or or try-forder<br>Cartlell or REALIDES/ (CAR) MO<br>ACTION A REAL ESTATE BRONER IS<br>ULT AN APPROPRIATE PROPESSION   | 2017<br>A<br>Derry/Cotton<br>t<br>Chick the unautorized thereating, deploy as<br>Remain<br>REPRESENTATION IS MADE AS TO THE<br>THE PERSON QUALIFIED TO ADVISE O<br>THE PERSON QUALIFIED TO ADVISE O<br>THE PERSON QUALIFIED TO ADVISE O  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X Richard John Martin II Buyer/Tenant C 1944.2015, Calibrais According of REALTORSH, Inc. Unlos 5: this form of any option based by photocoly machine or any other real standard MAS BEEN APPROVED BY THE CALIFORNIA ASSO OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANS IRANISACTIONS, F YOU DESIRE LEGAL OR TAX ADVICE. CONS Ins form in add and table to the calific protocond collective may who substrate to be Calif.  Photograph Databased by:   | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Man cognight law (Ten 17 U.S. Gow) for<br>mans, including basinitie or or try-forder<br>Cartlell or REALIDES/ (CAR) MO<br>ACTION A REAL ESTATE BRONER IS<br>ULT AN APPROPRIATE PROPESSION   | 2017<br>AX<br>Denty/Cotton<br>A<br>Homas<br>REPRESENTATION IS MADE AS TO THE<br>THE PERSON CULLUTION TO ADVISE O<br>Prese Association of REALTORS is to not a<br>memory of the NATIONAL ASSOCIATION  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X Richard John Martin II Buyer/Tenant C 1948-2015, Cathords Association of REALTORSH, Inc. Unlike Sr this form, or any portion thered by photocory matchine or any other This Form MAS BEEN APPROVED BY THE CALIFORNIA ASSO OR ACCURACY OF ANY PROVISION BY ATT SPECIFIC TRANS IT AND REAL TORS, IF YOU DESRE LEGAL OR TAX ADVICE CONS The user as a REALTORS to real excitation to real excitation of any other in storm is made analytic to real excitation of a providence of the california to the user as a REALTORS to real excitation to real excitations.  Photopher and Ordinated by: REAL ESTATE BUSDIESS SERVICES, NC. C C C C C C C C C C C C C C C C C C C   | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Mas cognish: Inv (Ten 17 U.S. Gold) for<br>means, including basinile or as two-forced<br>CIA:NNI OF REALTORSE (C.A.R.) NO<br>ACTION A REAL ESTATE BRONEN IS<br>ULT AN ASYNCHMATE ENDIFERSIVACU<br>represented with or purchase from the Cash<br>madeshie mark which may be used soly by   | 2017<br>AX<br>Denty/Cotton<br>A<br>Homas<br>REPRESENTATION IS MADE AS TO THE<br>THE PERSON CULLUTION TO ADVISE O<br>Prese Association of REALTORS is to not a<br>memory of the NATIONAL ASSOCIATION  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X Richard John Martin II Buyer/Tenant X Richard John Martin II Buyer/Tenant C 1948-2015, Cathoria Association of REALTORSA, Inc. Unliked St this form, or any portion thered by photocory matching or any other This Form MAS BEEN APPROVED BY THE CALIFORNIA ASSO OR ACCURACY OF ANY PROVISION BY ATT SPECIFIC TRANS IT is form in mate analytic to real evolution of any other ins form in mate analytic to real evolution of any other ins a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS and Order to the user as a REALTORS and Order to the user as a recent to the use | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Mas cognish: Inv (Ten 17 U.S. Gold) for<br>means, including basinile or as two-forced<br>CIA:NNI OF REALTORSE (C.A.R.) NO<br>ACTION A REAL ESTATE BRONEN IS<br>ULT AN ASYNCHMATE ENDIFERSIVACU<br>represented with or purchase from the Cash<br>madeshie mark which may be used soly by   | 2017<br>AX<br>Derry/Cotton<br>A<br>Hernas<br>REPRESENTATION IN MADE AS TO THE<br>THE PERSON CULLIFIC TO ADVISE O<br>OTHER ASSOCIATION OF REALTORS IN IN INC.<br>THE PERSON CULLIFIC TO ADVISE O<br>OTHER ASSOCIATION OF REALTORS IN IN INC.  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X Richard John Martin II Buyer/Tenant X Richard John Martin II Buyer/Tenant C 1948-2015, Cathoria Association of REALTORSA, Inc. Unliked St this form, or any portion thered by photocory matching or any other This Form MAS BEEN APPROVED BY THE CALIFORNIA ASSO OR ACCURACY OF ANY PROVISION BY ATT SPECIFIC TRANS IT is form in mate analytic to real evolution of any other ins form in mate analytic to real evolution of any other ins a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS and Order to the user as a REALTORS and Order to the user as a recent to the use | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Mas cognight inv (Ten 17 U.S. Coth) for<br>means, including besimile or computer<br>CUATION OF REALTORSD (C.A.R.) NO<br>ACTION A REAL ESTATE BROKER IS<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>Destable main which may be used boy by<br>Revenued by D.  | 2017<br>AX<br>Derry/Cotton<br>A<br>Hernas<br>REPRESENTATION IN MADE AS TO THE<br>THE PERSON CULLIFIC TO ADVISE O<br>OTHER ASSOCIATION OF REALTORS IN IN INC.<br>THE PERSON CULLIFIC TO ADVISE O<br>OTHER ASSOCIATION OF REALTORS IN IN INC.  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X Richard John Martin II Buyer/Tenant X Richard John Martin II Buyer/Tenant C 1948-2015, Cathoria Association of REALTORSA, Inc. Unliked St this form, or any portion thered by photocory matching or any other This Form MAS BEEN APPROVED BY THE CALIFORNIA ASSO OR ACCURACY OF ANY PROVISION BY ATT SPECIFIC TRANS IT is form in mate analytic to real evolution of any other ins form in mate analytic to real evolution of any other ins a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS and Order to the user as a REALTORS and Order to the user as a recent to the use | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Mas cognight inv (Ten 17 U.S. Coth) for<br>means, including besimile or computer<br>CUATION OF REALTORSD (C.A.R.) NO<br>ACTION A REAL ESTATE BROKER IS<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>Destable main which may be used boy by<br>Revenued by D.  | 2017<br>AX<br>Derry/Cotton<br>A<br>Hernas<br>REPRESENTATION IN MADE AS TO THE<br>THE PERSON CULLIFIC TO ADVISE O<br>OTHER ASSOCIATION OF REALTORS IN IN INC.<br>THE PERSON CULLIFIC TO ADVISE O<br>OTHER ASSOCIATION OF REALTORS IN IN INC.  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |
| Date May 12, 2017 Buyer/Tenant X Richard John Martin II Buyer/Tenant X Richard John Martin II Buyer/Tenant C 1948-2015, Cathoria Association of REALTORSA, Inc. Unliked St this form, or any portion thered by photocory matching or any other This Form MAS BEEN APPROVED BY THE CALIFORNIA ASSO OR ACCURACY OF ANY PROVISION BY ATT SPECIFIC TRANS IT is form in mate analytic to real evolution of any other ins form in mate analytic to real evolution of any other ins a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS, REALTORS is a requirement collective that the user as a REALTORS and Order to the user as a REALTORS and Order to the user as a recent to the use | Date <u>May 12,</u><br>Seller/Landlor<br>Seller/Landlor<br>Seller/Landlor<br>Mas cognisht inv (Ten 17 U.S. Coth) for<br>means, including besimile or computer<br>CUATION OF REALTORSD (C.A.R.) NO<br>ACTION A REAL ESTATE BROKER IS<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>ULT AN ADVECTMENT PROFESSION<br>Destable main which may be used boy by<br>Revenued by D.  | 2017<br>AX<br>Derry/Cotton<br>A<br>Hernas<br>REPRESENTATION IN MADE AS TO THE<br>THE PERSON CULLIFIC TO ADVISE O<br>OTHER ASSOCIATION OF REALTORS IN IN INC.<br>THE PERSON CULLIFIC TO ADVISE O<br>OTHER ASSOCIATION OF REALTORS IN IN INC.  | vi Jepinolucium IV<br>IECIA, VALEXIV<br>IN REAL ESTATE<br>IIICIAI IS INTROV |



### **Pre-Approval Letter**

Friday, April 14, 2017

### TO: Whom it may concern RE: Richard John (R.J.) Martin II

We are pleased to inform you that the above referenced loan application has been *pre-approved* with the following terms and conditions:

Purchase Price: \$2,500,000 Loan Program: Jumbo 30 YEAR FIX Loan amount: \$2,000,000

The following conditions must be satisfied for final loan approval:

- 1) Appraiser's certification of value along with a final inspection.
- 2) Acceptable Preliminary Title.
- 3) Following standard investor requirements: Evidence of Hazard Insurance, Flood Certification
- 4) Copy of Fully Executed Purchase Contract and Escrow Instructions

This approval is based on review of the borrower's credit report in conjunction with documentation provided by the borrower regarding employment, income, assets as applicable to the above loan. These items are sufficient to obtain final loan approval provided there are no changes in the borrower's financial situation as required by the loan program.

Please keep in mind the following:

- Upgrades and modifications that increase the purchase price beyond what is indicated above may invalidate this approval and result in disqualification or re-qualification on an alternative loan program offering.
- This approval does not include any contingencies unless specifically noted above. If the loan approval is contingent on sale of another property but that sale does not occur prior to closing on this property, requalification on an alternative loan program may be required to complete the purchase.
- At times market conditions require that loan program guidelines and parameters change, which may affect this approval unless your loan has been locked and will close within that lock period. If this occurs, we will review the borrower's file and notify you of any changes that apply.

Sincerely,

Mexis Roper

Alexis Roper Sr. Mortgage Loan Officer 619-436-8873 aroper@amerifirst.us NMLS #583371



AmeriFirst Financial, Inc., 1550 E. McKellips Road, Suite 117, Mesa, AZ 85203 (NMLS # 145368). 1-877-276-1974. Copyright 2014. All Rights Reserved. This is not an offer to enter into an agreement. Not all customers will qualify. Information, rates, and programs are subject to change without prior notice. All products are subject to credit and property approval. Not all products are available in all states or for all loan amounts. Other restrictions and limitations apply. License Information: CA: Licensed by The Department of Business Oversight under the California Residential Mortgage Lending Act

# EXHBIT 6

۵.

### M Gmail

Darryl Cotton <indagrodarryl@gmail.com>

| Executed Services Agreement for Representation of Darryl Cotton   |                               |
|---|-------------------------------|
| Darryi Cotton ≪indagrodany4@gmail.com≻<br>To: "Adam C, Wirf ≺awth@hbiaw.com≻<br>Cz: Jos Hurda G Juntao G (ggmail.com≻ | Thu, Jun 16, 2017 at 12:18 PM |
| Arlam   |                               |

Adam,

Please find attached the executed engagement latter, Per our agreement, notwithstanding the language in the engagement lotter, I will be financing this tarsuit with a total monthly payment of \$10,000 a month with the ratainer to be paid within 24 hours.

As per our phone discussion earlier today please do not respond to my aisfers request for information on your representation of me or the status of my 5176 Federal Bird property. My father holds the title on the property and sho is bying to make sure I am not representation graveff in the Genaci matter. I told her that you have been relained and I will provide hor with a copy of our Services Agreement which is really all she needs as assurance from not representing myself in this matter. Lastly please include Joe Hurtado in all future email correspondence between us.

cesel prese include doe miniado ar an ionara eman correspondence ceneden da.

I really look forward to working with you and your firm as we work to bring these matters to their ultimato resolutions.

Sincerely,

### Darryl Cotton

Service Contract 6-13-17.pdf 2197K

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=NW\_2aT3fiA0.en.&view=pt&msg=15cad2fed305137d&as\_from=indagrodarryl%40gmail.c... 1/1

## FINCH • THORNTON • BAIRD

ATTORNEYS AT LAW

David S. Demian ddemian@ftblaw.com

File 999,002

June 13, 2017

### VIA\_U.S. AND ELECTRONIC MAIL

Mr. Darryl Cotton 6176 Federal Boulevard San Diego, California 92114 indagrodarryl@gmail.com

### Re: Services Agreement For Representation Of Darryl Cotton

Dear Mr. Cotton:

We appreciate your decision to retain Finch, Thornton & Baird, LLP. Please forgive the formality of this letter but the California Business and Professions Code requires that we have a written agreement. This letter sets forth the terms of our representation.

1. <u>Description Of Representation And Services</u>. You retain Finch, Thornton & Baird, LLP to represent you in connection with obtaining a conditional use permit ("CUP") for 6176 Federal Boulevard and also to represent you in related civil and forfeiture actions related to the property. We will provide other services as requested and provided we agree to perform such services. All services shall be subject to this agreement.

2. <u>Fees To Be Charged</u>. Our fees will be billed on the basis of time expended at the hourly billing rates of the attorneys, law clerks and legal assistants involved. At the present time, our hourly rates vary from \$210.00 to \$420.00 for attorneys, \$195.00 to \$210.00 for law clerks and \$75.00 to \$125.00 for paralegal and legal assistants. My current hourly rate is \$400.00. Adam Witt's current hourly rate is \$300.00. These hourly rates are subject to change in the future and typically increase in September of each year. The rate(s) charged will be reflected on the invoices for services rendered. We bill in one-tenth of an hour increments. In order to deliver cost-effective services, when practical, work will be assigned to other qualified attorneys, law clerks or legal assistants with either billing rates lower than mine or some specialized knowledge beneficial to you.

3. <u>Costs And Expenses</u>. We also charge for expenses and costs necessarily incurred to perform our services. Examples of these are Secretary of State fees, California Department of Corporations fees, court filing fees, service of process fees, deposition court reporter and transcript costs, etc. It is our policy to <u>not</u> charge for minor everyday expenses such as photocopies, postage, facsimiles, mileage, phone expenses, etc., unless these expenses become beyond the ordinary. For example, extra large reproductions or photocopying large quantities of documents for discovery, depositions or trial exhibits, etc., are usually costly and we will bill for reimbursement of such expenses or have you pay the vendor directly.

Finch, Thornton & Baird, LP 4747 Executive Drive, Suile 700 San Diego, CA 92121 T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton June 13, 2017 Page 2 of 6

4. <u>Services Of Experts/Consultants</u>. It may become necessary to employ experts or consultants to assist in resolving a matter. We will obtain your approval for the retention of any such consultants or experts, and you may instruct us in writing at any time to terminate their services. The fees of experts and consultants will be in addition to the fees and costs charged for our services. In most circumstances, we will have the experts or consultants bill you directly.

5. <u>Payment Of Legal Fees</u>. For your convenience, we understand that we will be receiving payment for costs, expenses and fees relating to our legal services pursuant to this agreement from Joe Hurtado. Rather than billing you separately, one invoice will be forwarded to Joe.

Rule 3-310(F) of the Rules of Professional Conduct of the State Bar of California requires that we not accept compensation for representing a client from a person other than the client unless: (1) there is no interference with our independent professional judgment or with the attorney-client relationship; (2) information relating to representation of you is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) we obtain your informed written consent to such an arrangement. With regard to Rule 3-310(F), we do not believe there will be any interference with our independence of professional judgment or with the attorney-client relationship between our firm and you as a result of the payment of invoices by Joe because your interests are aligned. Note, <u>you remain liable for all fees and costs if Joe fails to pay</u>. We inform you of these matters and request your written consent to this arrangement. Execution of this agreement constitutes such written consent.

6. <u>Client Responsibilities</u>. We have two primary requests of our clients: (1) that we are kept informed of all information you obtain or discover regarding a matter for which we are retained; and (2) that we receive timely payment for our services and advances. In this regard, we invoice monthly and expect payment within 30 days. Any objection to an invoice must be made in writing within 30 days of the date of your receipt of the invoice or the objection is waived. At our option, late payments will accrue interest at the annual rate of seven percent. As security for the payment of our invoices, you grant us a lien upon any sums recovered (or which you are entitled to recover) as a result of our efforts, including any funds in our client trust account. This lien is in addition to our equitable lien rights.

With regard to our lien rights, Rule 3-300 of the Rules of Professional Conduct of the State Bar of California states:

"[We] shall not enter into a business relationship with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
- (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

Finch, Thornton & Baird, LP 4747 Executive Drive, Suite 700 San Diego, CA 92121 T 858.737.3100 F 858.737.3101 ftblaw.com Mr. Darryl Cotton June 13, 2017 Page 3 of 6

(C) The client thereafter consents in writing to the terms of the transaction or the terms of acquisition."

You granting us a lien is an adverse and/or business relationship and pursuant to the above Rule we recommend you seek advice from an independent lawyer of your choice before granting us the lien and entering into this agreement.

7. <u>Potential Conflicts Of Interest</u>. Representation by us in a particular matter is contingent upon clearance of all conflicts of interest checks. With regard to this matter, Rules 3-310(C) through 3-310(E) of the Rules of Professional Conduct of the State Bar of California state:

### Rule 3-310(C):

"[We] shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

### Rule 3-310(E):

"[We] shall not accept employment adverse to a client or former client where, by reason of the representation of the client or former client, [we have] obtained confidential information material to the employment except with the informed written consent of the client or former client."

With regard to Rule 3-310(C), it is our duty not to represent clients whose interests potentially or actually conflict, unless each client provides us with informed written consent to such representation. Our current understanding of the available facts and applicable law leads us to believe the prospect for an actual or potential conflict is low. Accordingly, we believe we can represent you in a manner consistent with the professional standards by which we must abide. If this understanding changes in any material way, we will make appropriate disclosures to each of you so a proper course of action may then be pursued.

Although we believe there is only a limited potential for any conflict of interest, we inform you of potential conflicts that could theoretically arise. We do not foresee such a conflict will arise, but advise of the potential. As discussed, we represent the Green Road, LLC, and its principals and agents (collectively "Green Road") in connection with all aspects of the potential operation of a marijuana dispensary within District 6 of the City of San Diego. Our ability to continue to represent Green Road in all matters that

Finch, Thornton & Baird, LLP 4747 Executive Drive. Suite 700 San Diego, CA 92121 T 858.737.3100 F 858.737.3101 fiblaw.com Mr. Darryl Cotton June 13, 2017 Page 4 of 6

may arise in the future is critical to our firm, including in connection with potential disputes in which you are adverse to Green Road. Our understanding is that you have an interest in operating a marijuana dispensary in District 6 either directly or indirectly, and that our representation here is focused on obtaining a District 4 dispensary. Accordingly, we do not perceive a conflict here. However, in order to preserve our ability to represent Green Road should a conflict arise in the future, by signing this agreement you agree we may terminate our representation of you at any time of a potential or actual conflict arises between you and Green Road.

In addition, in the even of such a conflict, we may ask your consent to represent you and Green Road concurrently. You each acknowledge that if any party refuses to sign such a waiver our firm reserves the right to terminate our representation of you. Similarly, if we do undertake representation adverse to you, you agree not to seek the disqualification of our firm <u>unless</u> you present court-admissible evidence that our firm (a) has material confidential information from you in the matter in which a conflict is claimed, (b) obtained such material confidential information by virtue of our representation of you, and (c) such information could be used against you in the case in which a conflict is claimed. Note that our withdrawal from representation of you could be expensive (bringing new counsel up to speed), disadvantageous (sending the wrong message to an adversary), or come at an inopportune time.

By execution of this agreement, you acknowledge our warnings of potential conflicts of interest with respect to this matter, and waive any and all conflicts of interest which presently exist, or may hereafter arise, by virtue of our representation. Before consenting to our representation on these terms, we recommend you carefully consider the ramifications of our representation on these terms and consult with counsel of your choice.

8. <u>Disclaimer Of Guarantees</u>. It is impossible for us to make any guarantees regarding the successful termination of a matter and all expressions relative to the merits of your positions are only matters of our opinion and do not constitute a guarantee of a particular result.

9. <u>Client Contact</u>. It is our practice to furnish our clients with copies of all important pleadings and/or correspondence and to give verbal or written status reports from time to time concerning the progress of our representation. We encourage you to contact us if you have any questions concerning the status of our representation.

10. <u>Termination Or Withdrawal</u>. You have the right to terminate our services at any time. We may withdraw from representation upon reasonable written notice to enable you to secure other counsel due to: (1) the dissolution of our firm; (2) the discovery of evidence that your claim, suit or position lacks merit; (3) your non-cooperation or material breach of this agreement; and/or (4) the discovery of an irreconcilable conflict of interest. In the event of termination or withdrawal, we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring the files. Similarly, if at any time, during or after our representation, you request your client files, you agree we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring said files.

Finch, Thornton & Baird, LLP 4747 Executive Drive, Suite 700 San Diego, CA 92121 T 858.737.3100 F 858.737.3101 ftblaw.com Mr. Darryl Cotton June 13, 2017 Page 5 of 6

11. <u>Retainer</u>. We request a retainer of \$10,000.00 as an initial payment for our invoices. The retainer will be placed in the Finch, Thornton & Baird, LLP Client Trust Account, and we are authorized to make disbursements into our firm account to cover amounts we invoice you. Our monthly invoices will show the amount charged against the retainer and the retainer balance. We may request this retainer be replenished monthly or from time to time. The retainer amount is not a representation of the estimated total fees, costs and expenses likely to be incurred in the course of our representation. If we allow the retainer to be depleted, you agree to comply with the billing and payment provisions set forth above. You may pay this retainer by check, payable to Finch, Thornton & Baird, LLP Client Trust Account or by going on our website <u>http://www.ftblaw.com/bill-pay/</u>. Click on the RETAINER PAYMENT button and pay via credit card. Once the retainer is depleted and you receive invoices for a balance due, you may use this same site to make credit card payments, by clicking the INVOICE PAYMENT button.

12. <u>Arbitration</u>. Any dispute relating to fees and costs due pursuant to this agreement shall, at your discretion and upon timely demand, be submitted to binding arbitration before the San Diego County Bar Association pursuant to California Business and Professions Code section 6200, et seq., or should that organization decline to arbitrate the dispute, before the State Bar of California pursuant to California Business and Professions Code section 6200, et seq.

Subject to the foregoing requirements of California Business and Professions Code section 6200, et seq., any controversy or claim arising out of or relating to this agreement shall be resolved by binding arbitration before the American Arbitration Association by a single arbitrator in San Diego, California, in accordance with the Commercial Rules of the American Arbitration Association prevailing at the time of the arbitration and judgment on the award may be entered in any court having jurisdiction. The right to appeal from the arbitrator's award, any judgment entered, or any order made is expressly waived.

13. <u>Conclusion</u>. To confirm this letter accurately reflects our complete and mutual understanding as to the terms of our agreement, please date, sign and return an original agreement along with a check for \$10,000.00 in the enclosed addressed and stamped envelope. A duplicate original is enclosed for you. Thank you for the opportunity to be of service.

Very truly yours,

David S. Demian. Partner

Enclosures

DSD:hkr/3BD2583

cc: Mr. Joe Hurtado (via email only) (w/o encls.)

Finch, Thornton & Baird, 119 4747 Executive Drive, Suite 700 San Diego, CA 92121 T 858.737.3100 F 858.737.3101 ftblaw.com Mr. Darryl Cotton June 13, 2017 Page 6 of 6

### AUTHORIZATION, CONSENT, AND ACKNOWLEDGMENT:

I have read and understand this services agreement. I acknowledge receiving full disclosure of the terms of the conflicts of entering the transaction described above. I understand I may seek independent counsel before signing this agreement. I consent on behalf of the entity listed below to the representation by Finch, Thornton & Baird, LLP, as described above.

Signature: Darryl Cotton Dated: 20

Finch, Thornton & Baird, LLP is authorized to accept direction as to the representation of you from the following individuals:

Darryl Cotton-6-15-

Finch, Thornton & Baird, LP 4747 Executive Drive, Suite 700 San Diego, CA 92121 T 858.737.3100 F 858.737.3101 ftblaw.com

Client No. \_\_\_\_\_

i

ł

## **BILLING INFORMATION**

-

| (Name)  |   |  |  |  |
|---|---|--|--|--|
|   |   |  |  |  |
| (Title)   |   |  |  |  |
| (Address)   |   |  |  |  |
|   |   |  |  |  |
| (Work Phone)  | (Direct Phone)  |  |  |  |
| (Fax)   | (Mobile Phone)  |  |  |  |
| (E-mail)  |   |  |  |  |
| Please provide the name of your accounts payable contact.           |   |  |  |  |
| Please provide the name of your acc                                 | ounts payable contact.  |  |  |  |
| Please provide the name of your acc                                 | ounts payable contact.  |  |  |  |
| Please provide the name of your acc                                 | counts payable contact.   |  |  |  |
| (Name)  | ounts payable contact.  |  |  |  |
|   | ounts payable contact.  |  |  |  |
| (Name)  | ounts payable contact.  |  |  |  |
| (Name)<br>(Title)   | ounts payable contact.  |  |  |  |
| (Name)<br>(Title)<br>(Address)                                      |   |  |  |  |
| (Name)<br>(Title)   | Ounts payable contact.  |  |  |  |
| (Name)<br>(Title)<br>(Address)                                      |   |  |  |  |
| (Name)<br>(Title)<br>(Address)<br>(Work Phone)                      | (Direct Phone)  |  |  |  |
| (Name)<br>(Title)<br>(Address)<br>(Work Phone)                      | (Direct Phone)  |  |  |  |
| (Name)<br>(Title)<br>(Address)<br>(Work Phone)<br>(Fax)<br>(E-mail) | (Direct Phone)  |  |  |  |
| (Name)<br>(Title)<br>(Address)<br>(Work Phone)<br>(Fax)<br>(E-mail) | (Direct Phone)<br>(Mobile Phone)<br>r invoices? (Select One) E-mail: 	Mail: |  |  |  |

ž

## EXHIBIT 7

| t<br>• | •   |   |  |   |  |
|--------|---|---|--|---|--|
|        | 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11 | FERRIS & BRITTON<br>A Professional Corporation<br>Michael R. Weinstein (SBN 106464)<br>Scott H. Toothacre (SBN 146530)<br>501 West Broadway, Suite 1450<br>San Diego, California 92101<br>Telephone: (619) 233-3131<br>Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com<br>stoothacre@ferrisbritton.com<br>AUSTIN LEGAL GROUP, APC<br>3990 Old Town Ave., Ste. A112<br>San Diego, CA 92110<br>Telephone: (619) 924-9600<br>Fax: (619) 881-0045<br>gaustin@austinlegalgroup.com<br>Attorneys for Real Parties in Interest<br>LARRY GERACI and REBECCA BERRY |  |   |  |
|        | 12  | SUPERIOR COURT OF CALIFORNIA  |  |   |  |
|        | 13  | COUNTY OF SAN DIEGO   | 30, CENTRAL DIVISION   |   |  |
|        | 14  | DARRYL COTTON, an individual,   | Case No. 37-2017   | -00037675-CU-WM-CTL                           |  |
|        | 15  | Petitioner/Plaintiff,   | Judge: Hon   | . Eddie Sturgeon                              |  |
|        | 16<br>17<br>18<br>19                                  | v.<br>CITY OF SAN DIEGO, a public entity; and<br>DOES 1 through 25,<br>Respondents/Defendants.  | DECLARATION OF ABHAY<br>SCHWEITZER IN SUPPORT OF<br>OPPOSITION TO EX PARTE<br>APPLICATION FOR ISSUANCE OF AN<br>ALTERNATIVE WRIT OF MANDATE<br>OR FOR AN ORDER SETTING AN<br>EXPEDITED HEARING AND BRIEFING<br>SCHEDULE<br>[IMAGED FILE] |   |  |
|        | 20<br>21  | REBECCA BERRY, an individual; LARRY<br>GERACE, an individual, and ROES 1 through<br>25,   |  |   |  |
|        | 22<br>23  | Real Parties In Interest.   | DATE:<br>TIME:<br>DEPT:  | October 31, 2017<br>8:30 a.m.<br>C-67         |  |
|        | 23<br>24  |   | Petition Filed:  | October 6, 2017                               |  |
|        | 25  |   | Trial Date:  | None  |  |
|        | 26  |   |  |   |  |
|        | 27  |   |  |   |  |
|        | 28  | 1   |  |   |  |
|        |   | DECLARATION OF ABHAY SCHWEITZWER IN<br>ISSUANCE OF AN ALTERNATIVE WRIT OF MANI<br>HEARING AND BRD   | DATE OR FOR AN OR  | ITION TO PETTION FOR<br>DER SETTING EXPEDITED |  |

1 I, Abhay Schweitzer, declare:

I am over the age of 18 and am not a party to this action. I have personal knowledge of
 the facts stated in this declaration. If called as a witness, I would testify competently thereto. I
 provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or
 for an order setting an expedited hearing and briefing schedule.

I am a building designer in the state of California and a Principal with Techne, a design
firm I founded in approximately December 2010. Techne provides design services to clients
throughout California. Our offices are located at 3956 30<sup>th</sup> Street, San Diego, CA 92104. Our firm
has worked on approximately 30 medical marijuana projects over the past 5 years, including a number
of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of
San Diego ("City"). One of these projects was and is an application for a MMCC to be located at 6176
Federal Ave., San Diego, CA 92105 (the "Property").

3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services
in connection with the application for a MMCC to be developed and built at the Property (the
"Project"). Those services included, but are not limited to, services in connection with the design of
the Project and application for a Conditional Use Permit (the "CUP").]

The first step in obtaining a CUP is to submit an application to the City of San Diego.
 My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible
 for preparing the noticing package and radius maps) prepared the CUP application for the client as
 well as prepared the supporting plans and documentation. My firm coordinated their work and
 incorporated it into the submittal.

5. On or after October 31, 2016, I submitted the application to the City for a CUP for a medical marijuana consumer cooperative to be located on the Property. The CUP application for the Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the submission of several forms to the City, including Form DS-318, that I am informed and believe was

28

DECLARATION OF ABHAY SCHWEITZWER IN SUPPORT OF OPPOSITION TO PETTION FOR ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING EXPEDITED HEARING AND BRIEFING SCHEDULE

signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and
 correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in
 Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of
 Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule
 (hereafter "RPI NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6 6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the
7 form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from
8 which to choose when checking – "Owner", "Tenant/Lessee" and "Redevelopment Agency". The
9 purpose of that signed section, Part 1, is to identify all persons with an interest in the property and
10 must be signed by all persons with an interest in the property.

11 7. The CUP application process generally involves several rounds of comments from the 12 City in which the applicant is required to respond in order to "clear" the comment. This processing 13 involved substantial communication back and forth with the City, with the City asking for additional 14 information, or asking for changes, and our responding to those requests for additional information and making any necessary changes to the plans. I have been the principal person involved in dealings with 15 16 the City of San Diego in connection with the application for a CUP. My primary contact at the City 17 during the process is and has been Firouzdeh Tirandazi, Development Project Manager, City of San 18 Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to 19 be the project manager for our CUP application.

8. We have been engaged in the application process for this CUP application for
approximately twelve (12) months so far.

9. At the outset of the review process a difficulty was encountered that delayed the processing of the application. The Project was located in an area zoned "CO" which supposedly included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the City passed a new regulation that amended the zoning ordinance to clarify that operating a medical marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this

28

DECLARATION OF ABHAY SCHWEITZWER IN SUPPORT OF OPPOSITION TO PETTION FOR ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING EXPEDITED HEARING AND BRIEFING SCHEDULE

regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and the City resumed its processing of the CUP application.

3 10. The CUP application for this Project has completed the initial phase of the process. 4 This initial phase was completed when the City deemed the CUP application complete (although not 5 yet approved) and determined the Project was located in an area with proper zoning. When this 6 occurred, as required, notice of the proposed project was given to the public as follows: First, on-March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for 7 8 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second, 9 the City mailed the Notice of Application to all properties within 300 feet of the subject property. 10 Third, as applicant we posted the Notice of Application at the property line as was required.

11 11. Since the completion of the initial phase of the process we have been engaged in 12 successive submissions and reviews and are presently engaged still in that submission and review 13 process. The most recent comments from the City were received on October 20, 2017. There is one 14 major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the 15 next six (6) weeks.

16 12. Once the City has cleared all the outstanding issues it will issue an environmental 17 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination 18 ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

19 13. The NORA must be published for 10 business days. If no interested party appeals the 20 NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The 21 hearing is usually set on at least 30 days' notice so the City's Staff has time to prepare a report with its 22 recommendations regarding the issues on which the hearing officer must make findings. If there is no 23 appeal of the NORA, I expect the hearing before the hearing officer to be held in late January or 24 February 2018.

14. If the NORA is appealed it will be set for hearing before the City Council. It is my
opinion that the earliest an appeal of the NORA could be heard before the City Council would be midJanuary 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical

28

1

2

DECLARATION OF ABHAY SCHWEITZWER IN SUPPORT OF OPPOSITION TO PETTION FOR ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING EXPEDITED HEARING AND BRIEFING SCHEDULE

2 marijuana CUP application. The one NORA appeal that was upheid is a project located in a flood 3 zone.

4 15. If there is a NORA appeal and such appeal is denied by the City Council, then the 5 earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

16. If there is a NORA appeal and it is upheld by the City Council, the City Council would retain jurisdiction and the CUP application would be heard by the City Council for a final determination at some point after the NORA appeal. In that case the earliest I would expect this to occur would also be March 2018.

10 17. To date we have not yet reached the stage of a City Council hearing and there has been
11 no final determination to approve the CUP.

18. I have been notified by the City of San Diego that as of October 30, 2017, there has been
13 no other CUP Application submitted concerning on the property.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is
true and correct. Executed this 30th day of October, 2017.

Dated: 10/30/2017 18 19

1

6

7 8

9

. 14

17

28

ABHAY SCHWEITZER

DECLARATION OF ABHAY SCHWEITZWER IN SUPPORT OF OPPOSITION TO PETTION FOR ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING EXPEDITED HEARING AND BRIEFING SCHEDULE

# EXHIBIT 8

.

| 1        |    | I, Elizabeth Emerson, hereby declare:  |
|----------|----|--|
| 2        | 1. | I have personal knowledge of the facts I state below, and if I were to be called as a          |
| 3        |    | witness, I could competently testify about what I have written in this declaration.            |
| 4        | 2. | I am 41 years old and an Air Force veteran. I served my country honorably in military          |
| 5        |    | intelligence and held a Top Secret clearance for all seven years of my service.                |
| 6        | 3. | I later served as a police dispatcher in Texas for two years and left on good terms to move to |
| 7        |    | San Diego, where I am now a resident.  |
| 8<br>9   | 4. | I worked in Accounts Payable for the law firm of McCarthy & Holthus which I left after two     |
| 10       |    | and a half years to start my own bookkeeping, accounting and administrative assistant          |
| 11       |    | enterprise. Because of this I now handle the accounting for GreenerLiving, a landscape and     |
| 12       |    | lawn maintenance company, which is co-owned by Mr. Tom Maas and Mr. Joe Hurtado.               |
| 13       | 5. | I accompanied Mr. Maas and Mr. Hurtado to the hearing for Mr. Cotton on December 7,            |
| 14       |    | 2017 as it was strongly anticipated that this hearing would produce positive results for Mr.   |
| 15       |    | Cotton and, thus, for Mr. Hurtado.   |
| 16<br>17 | 6. | At the hearing, I was expecting Mr. Demian to mention what Mr. Hurtado repeatedly called       |
| 18       |    | the "smoking gun" email in which Mr. Larry Geraci contradicts himself regarding some           |
| 19       |    | contract. Mr. Demian did not raise any emails in his oral arguments to the Court.              |
| 20       | 7. | During the hearing, the judge asked Mr. Weinstein what would be wrong with preventing          |
| 21       |    | the withdrawal of the CUP application. Mr. Weinstein replied with something about his          |
| 22       |    | client having the freedom to do what he wanted.  |
| 23       | 8. | After the hearing concluded, Mr. Hurtado started yelling at Mr. Demian right outside the       |
| 24<br>25 |    | Courtroom about how it was possible that Mr. Demian could not raise with the Court "the        |
| 23<br>26 |    | fucking email!" Mr. Hurtado was incredibly agitated and loud and everyone in the hallway       |
| 27       |    | was staring at Mr. Hurtado and Mr. Demian.   |
| 28       |    | -  |
|          |    | - 1 - Supporting Declaration   |
|          |    |  |

.

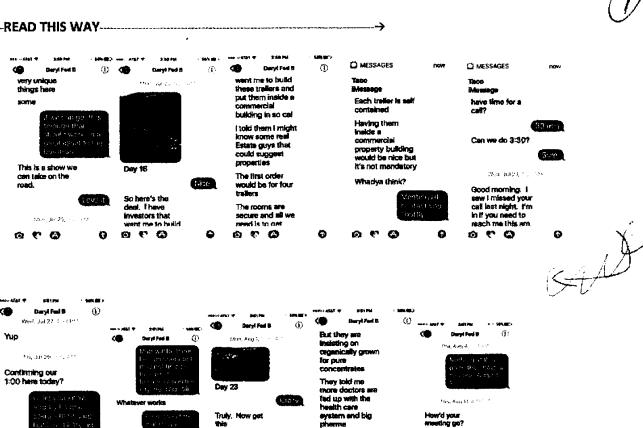
.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. 01/22/2017 DATED: Elizabeth Emerson - 2 -Supporting Declaration

| 1        | DECLARATION OF TOM MAAS   |
|----------|---|
| 2        | I, Tom Maas, hereby declare:  |
| 3        | 1. I have personal knowledge of the facts I state below, and if I were to be called as a        |
| 4        | witness, I could competently testify about what I have written in this declaration.             |
| 5        | 2. I have been the proprietor of several businesses in Minneapolis, MN.                         |
| 6        | 3. I am a co-owner of GreenerLiving, a landscaping company with Mr. Joe Hurtado. We             |
| 7        | originally started GreenerLiving in Minneapolis, but we relocated to San Diego, where I am      |
| 8        | now a resident.   |
| 9        | 5. I accompanied Mr. Hurtado to the hearing for Mr. Cotton on December 7, 2017 to provide       |
| 10       | support for both Mr. Cotton and Mr. Hurtado. I anticipated, based on the descriptions provided  |
| 11<br>12 | by Mr. Cotton and Mr. Hurtado, that the attorney for Mr. Cotton would prevail that day based    |
| 12       | primarily on an email sent by Larry Geraci that was called the "smoking gun" by Mr. Hurtado.    |
| 14       | 6. Mr. Demian, counsel for Mr. Cotton, did not raise any email arguments with the Court.        |
| 15       | 6. After the hearing, Mr. Hurtado yelled at Mr. Demian for failing to raise the email with the  |
| 16       | Court in the hallway outside the Courtroom.   |
| 17       | I declare under penalty of perjury under the laws of the State of California that the foregoing |
| 18       | is true and correct.  |
| 19<br>20 | DATED: 1/22/2018 /s/Tom Maas  |
| 20       | Tom Maas  |
| 22       |   |
| 23       |   |
| 24       | - ·   |
| 25       |   |
| 26       |   |
| 27       |   |
| 28       |   |
|          | - 1 -<br>SUPPORTING DECLARATION   |

.

# EXHIBIT 9



West, Aug 2, 11 9 22

Le, Aug 12, 15, 3 AV

ø

0 T 0

2510 Daryl Fed B reach me this am. Yup A 4 111 Confirming our 1:00 here today? this There are MDS Excellent W-9 6627 who visited over Fri, Jul 29, 12121 PM Mart And Land and the weekend who othey again Any updates to are completely shére? Shitt will be trace \*\*\* into med canna

@ 🕈 🚱

0

. .

44 /> 4747 🕈

ħ.

**Going vertical** 

ACDC for live

Yup

<**6** 

resin processes

We are doing so

0 7 0

0 7 0

<br/>

2.10 PH

**Deryl Fed B** 

to at the same

Dec. 2023, 1997

1

"

WOALL URP

N.20

ø

**1**57

.

-

Ф;

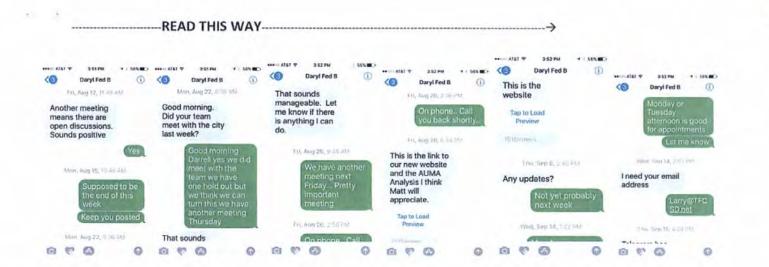
-----

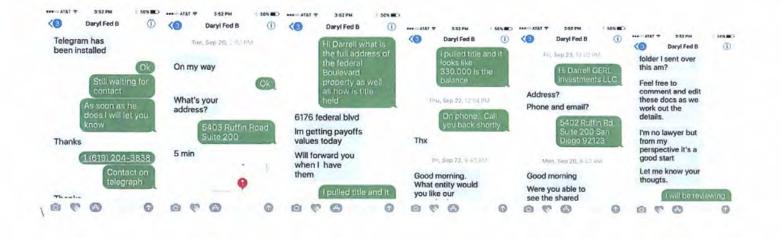
**GER0426** 

0 7 0

Ø

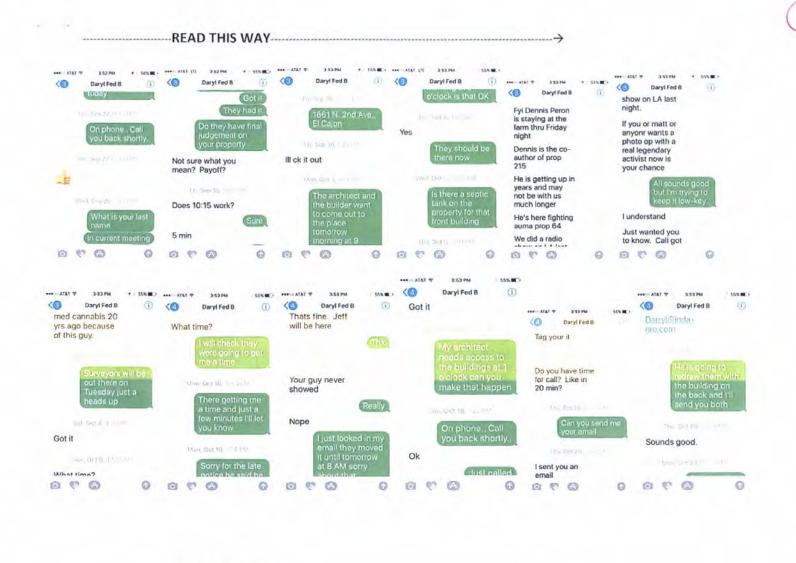
a



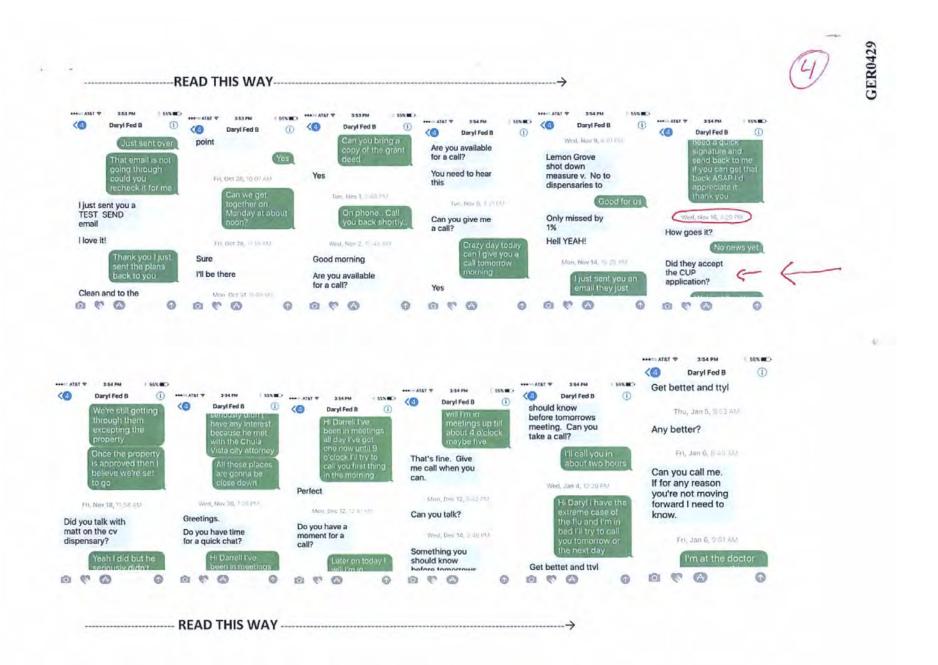


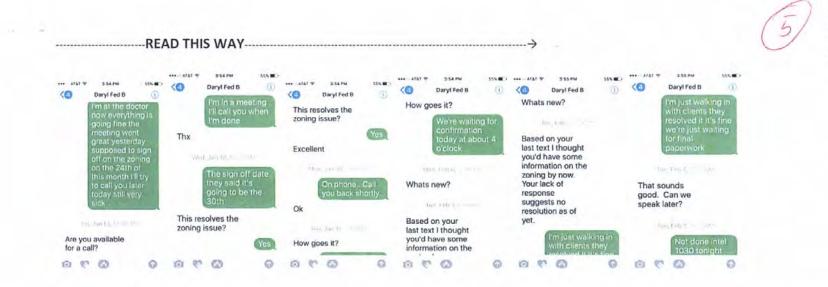
GER0427

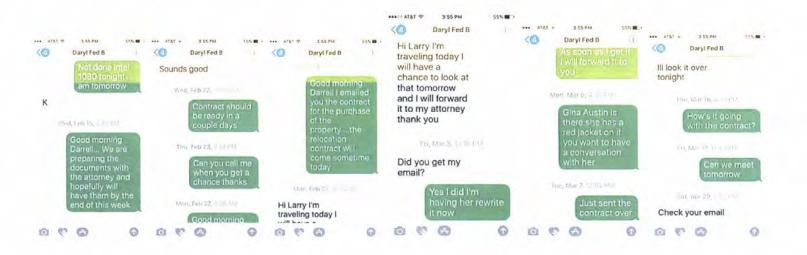
GER0428



READ THIS WAY







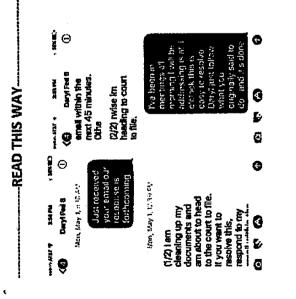
----- READ THIS WAY ------

GER0430

**GER0431** 



1



1002

-- READ THIS WAY ----

# EXHIBIT 10

X. A

## M Gmail

Jee Hurtade <j.hurtade1@gmail.com>

Federal - Expedited Schedule / Statute of Frauds

Joe Hurtade </ Juutado l@gmail.com> Te: "David S, Demian" «ddemiar@fiblaw.com>, "Adam C, Wit" «awit@fiblaw.com> Cc: Danyl Cetton «Indegrodaryl@gmail.com> Thu, Nev 16, 2817 at 10-45 AM

Hi David / Adam.

Expedited Hearing and Briefing Schedule. I'm putting logether my notes / thoughts for the request for the metian to expedie, I will ferward later today or temorrow et the latest and hopefully it is helpful. (I have issed every argument and point they make in all of the pleadings to date, we have a logical and persuasive response for every point.)

Statule of Frauds. I came across a case last right that I think would be incredibly supportive if not actually dispositive on the statute of frauds issue we faced in the demarter. (I was so incredibly frustrated last night thinking I found "the one case" and all needed to do was Shepardize the case to confirm and find, kisely, more recent supporting case law. Best I got were tread as and Google Scholar Nis - I'm calling and signing up with Westlaw or Lexis today.)

The case is Monarco v. Lo Greco (35 Cal. 2d 621, 220 P.2d 737, 1950 Cal. 370). The below includes language copied from the case and online case brief websites and treatles;

15109. The controling question is whether plaintifie estopped from relying upon the atatule of frauds to dereat the enforcement of the oral agreement."

Bulle of Law. "The Cationia Suprame Court decided in Monanco v. Le Greco that a party is estepped to assert the Statute of Frauds if he would be unjustly enriched or whan unconscionable injury would result to the other party who, in railance on the oral agreement, was induced to materially change his position."

"Since the test in Monarco is so general, the trial courts have the considerable flaxibility to determine whether te enferce the Statute in a given case. While this makes predictability uncertain, it affords the trial court the eportunity to consider the whole spectrum of factors which might be raievant to balancing the desquary of the fect determination process against the purposes of the Statute. Such freedom for the trial court is justifiable if trial procedure has advanced to statute and the purposes of the Statute. Such freedom for the trial court is justifiable if trial procedure has advanced to statute.

### Analysis.

Unjust Enrichment. The evidence is dear that Geraci is attempting to falsely claim the receipt for the \$10,000 is actually the final agreement, thereby unjustly enriching himself at the expense of the benefits that Cotion bargained for, inter effect of the evidence is a strength of the evidence is a strength of the \$10,000 is actually the final agreement, thereby unjustly enriching himself at the expense of the benefits that Cotion bargained for, inter Unconscionable injury. Because of Gerad, Cotten has:

(a) been unable le make a Eving. He is unable to operate his businasses, Floel Systems (electrical contracting) and Dabercia (manufecturing), that operate from the property. This action has created the possibility that he will bee the property and not have any funds to relocate to another property to operate from (i.e., he can't entar into cardracts and make a Ning because if he does end then loses this cose, then he has ne property to work fram, won't be able to uphold his end af the contracts and he would be asling himself up for severe damages);

(b) been forced to repeatedly renegatize the terms of the sale of the property with his agent and the buyer of the property, most notably requiring him to give up the 20% equity stake that he originally bargained for with FLJ. This represents of purpetual langueers in a part of the property and the buyer of the property most notably requiring him to give up the 20% equity stake that he originally bargained for with FLJ. This represents of purpetual langueers in a part of the property and the buyer of the property and the buyer of the property in the sale of the property stake that he originally bargained for with FLJ. This represents of the purpetual langueers is a constrained success, is at the very itest a perpetual monthly the sale of the buyer of the property stake that he originally bargained for with FLJ. This represents the formation of the buyer of the property and the buyer of the property and the buyer of the property and the buyer of the buye

It appears this case is helpful for us - hopefully this case has not been overturned and/or the wabelias I got this information from are not inaccurate. Please let me know your thoughts.

Geneci Declaration, When you have a moment, i would appreciate if you would forward Genacia supporting declaration to his apposition to eur ex parte motion for an expedited hearing/schedule. The PDF forwarded is missing the first three pages of Thank you, Joe

2 4040K

https://mail.gpogle.com/mail/u/0/?ui=2&ik=ec6306353f&jsver=NW\_2aT3fiA0.en.&view=pt&msg=15fc62611954e137&as\_from=j.hurtado1%40gmail.co... 1/1



# EXHIBIT /

/

Gmail - RE: Withdrawal

# M Gmail

 Barryl Cotton <Indagradarryl@gmall.com>

 RE: Withdrawai

 David 3, Damian codemian@ftblaw.com>

 To: Darryl Cotton 

 To: Darryl Cotton 

 Cotton 

 David 3, Damian codemian@ftblaw.com>

 To: Darryl Cotton 

 To: Darryl Cotton 

 David 3, Damian codemian@ftblaw.com>

 To: Darryl Cotton 

 To: Darryl Cotton 

 Per your request, stacked are subsitution of atomey forms which must be field with the Court in all three pending matters. Please sion and empil back to us for fifng as soon as cossible.

 With your consent, we will contact Wainstein to move next week's depositions to be re-noticed after you have retained new counsel. To avoid any harm to you this must be addressed this week so clease advise if you sores promotiv.

 As to the reasens for our termination, I respectfully disagree with the characterization of the hearing. Alse, as to the City Attomay, she told me my papers and oral argument were excelent. She did not say we should have won.

We are preparing final involces and your files will be made available for you or your new counsel as quickly as possible.

Bast.

David

David S, Demian Partner

Finch, Thomion & Baird, LLP Attorneys At Law 4747 Executive Drive, Suile 700 San Diego, CA 92121

T 656.737.3100 D #58.737.311e M 658.245.2451 F 658.737.3101

fibiaw.com Bio Linkedin

CONFIDENTIALTY NOTICE: This small sortains highly printed and conductive linksmatch resonant only to the laboration of the message. If the message is not the intended recipiers, or the spent responsible is paiver is the benedid recipiers, you are servely recibled that any review, describution or desyred of the communication is prohibited. If the communication was recipied and control was by reply small and denies the company indexes.

From: Darryl Colton [mailto:Indagrodsrryl@gmall.com] Sent: Thursday, December 07, 2017 12:33 PM To: David S, Demlan Gódemian@htbaw.com> C<: Joe Hurdado </hurdatado Subject: Re: Withdrawal

David,

I spoke with Joe and his Informad me that you were not familiar with the points in the P&A for the TRO motion and that you did not reise them before the Court when they were directly on point and <u>nectasary to</u> be raised as a response to Weinstein's arguments. Further, that the atlemey for the City explicitly took you right after you walked out af the hearing that we <u>should have won</u> based on the moving papers? Our relationship is terminated, but I need it to be clear that it is based on your portermance today at the hearing. Joe is already looking for new coursel to represent me and we will be submitting a motion for reconsideration with the Court.

- Darryl

On Thu, Dec 7, 2017 at 11:33 AM, David S, Demlan <ddemian@ftbisw.com> wrote;

Gerdement: Per my discussion with Joe possible document document and to Berryk is apparent our withdrawal from the case is the next step. I will be sending the consent form and filing and preparing the file for your delivery. You should fineadately seek drives of new counsel.

Please coll at any time with questions.
David S. Demian *Pariner*Finch, Thomion & Baird, LLP Atomeys At Law
4747 Executive Dive, Suite 700 San Diego, CA 92121
T 558.737.3116 M Dis.245.2451 F 658.737.3191
Riamcom Eio Linkedin

Coverpoint of the comparised to predict be deviced by to be befolded weetly needs the Banastage. If the needs of the means the te served mythed, or the appet mythed to be befolded myther, you are hearly to full be and you by regiver, and weetly needs the banastage. If the needs of the means the file terms and myther, you are hearly to full be and and you by regiver, and weetly needs the banastage. If the needs of the means the file terms and myther, you are hearly to full be and the banastage bing to any and myther, or the appet myther banastage to any predict, Banastage to the prediction of the means the banastage bing to any and myther, and hearly to full banastage to any appet myther banastage to any regiver, appet myther banastage to any regiver, appet myther banastage to any regiver, appet myther banastage to any appet myther banastage to any regiver, appet myther banastage to any regivery of than appet myther banastage to any regiver mythery di

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=NW\_2aT3flA0.en.&view=pt&msg=16032faeb2281a96&as\_from=ddemian%40ftblaw.com... 1/2

1/22/2018

## 3 attachments

Sub of Att - Forfeiture Matter.pdf

Sub of Att - Writ Matter.pdf 65K

13 Sub of Att - Geraci Matter.pdf 63K

Gmail - RE: Withdrawal

•

https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&jsver=NW\_2aT3fiA0.en.&view=pt&msg=16032faeb2281a96&as\_from=ddemian%40ftblaw.com... 2/2



# EXHIBIT 12

# FINCH • THORNTON • BAIRD"

ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121 T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton January 10, 2018 6176 Federal Boulevard Account No: 2403-003 San Diego, CA 92114 Statement No: 150904 For Legal Services Rendered through December 31, 2017 4 **Total Balance Due** \$9,913.95 Re: Forfeiture Action Rate Hours 12/04/17 ACW Correspondence with Joe and Darryl regarding upcoming 330.00 0.20 66.00 deadline to make payment to City. Recapitulation Rate Hours ACW Adam C. Witt - Associate 330.00 0.20 66.00 For Current Services Rendered 0.20 \$66.00 Expenses/Advances Date Description Amount One Legal's fee for e-filing substitution of attorney. Inv. No. 11145398 -12/11/17 9.95 One Legal LLC **Total Expenses/Advances** \$9.95 **Total Current Work** \$75.95 Previous Balance 9,838.00 Payments/Adjustments Since Last Bill -0.00 **Balance Due** \$9,913.95

Account Number: 2403 - 003 Statement No: 150904 January 10, 2018 Page 2

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

Payment is due within 30 days of the invoice date.

Please contact us within 10 days of the invoice date with any questions. Thank you.

To pay online visit: http://www.ftblaw.com/bill-pay/

# FINCH \* THORNTON \* BAIRD \*\*

ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121 T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton 6176 Federal Boulevard San Diego, CA 92114 January 10, 2018 Account No: 2403-002 Statement No: 150903

For Legal Services Rendered through December 31, 2017

**Total Balance Due** 

\$42,020.48

Re:

6176 Federal Boulevard Conditional Use Permit

|          |     |   | Rate   | Hours |        |
|----------|-----|---|--------|-------|--------|
| 12/01/17 | SLH | Analyze status and developments of CUP application (1.0); analyze opposition to ex parte application with respect to same (0.5); prepare public records act request for documents and correspondence with respect to City, Geraci, and related parties (0.5). | 300.00 | 2.00  | 600.00 |
| 12/01/17 | RSB | Prepare electronic stipulation to accept pleadings and other documents through email.   | 225.00 | 0.20  | 45.00  |
| 12/01/17 | ACW | Work on developing strategy for writ and ex parte relief<br>regarding CUP application.  | 330.00 | 1.10  | 363,00 |
| 12/01/17 | DSD | Further work on ex parte motions and strategy.  | 415.00 | 2.40  | 996.00 |
| 12/03/17 | DSD | Discussion with Joe on options for saving permit by<br>concurrent actions.  | 415.00 | 1.00  | 415.00 |
| 12/04/17 | DSD | Analyze case of Monarco in connection with effort acquire CUP; work on application for peremptory writ.   | 415.00 | 1.40  | 581.00 |
| 12/04/17 | RSB | Revise ex parte application to incorporate Joe Hurtado's analysis.  | 225.00 | 1.70  | 382.50 |
| 12/04/17 | SLH | Conference to analyze San Diego Municipal Code<br>provisions for application resubmittal.   | 300.00 | 0,20  | 60.00  |
| 12/04/17 | DSD | Final correspondence to Weinstein regarding stipulation.  | 415.00 | 0.40  | 166.00 |
| 12/04/17 | DSD | Correspondence to Weinstein as to e-service.  | 415.00 | 0.20  | 83.00  |
| 12/04/17 | DSD | Analyze mandatory injunction options; work on proposed order.   | 415.00 | 0.50  | 207.50 |
| 12/04/17 | DSD | Begin work on proposed order.   | 415.00 | 0.60  | 249.00 |
| 12/04/17 | RSB | Revise ex parte application (0.5) and Cotton's and<br>Demian's declarations to reflect Hurtado's latest insights<br>(0.3).  | 225.00 | 0.80  | 180.00 |
| 12/04/17 | DSD | Further work on writ application.   | 415.00 | 1.20  | 498.00 |
| 12/04/17 | ACW | Work on proposal to attorney Weinstein regarding<br>stipulation on CUP application.   | 330.00 | 0.80  | 264.00 |
| 12/05/17 | DSD | Further work on writ request.   | 415.00 | 0.60  | 249.00 |
| 12/05/17 | CRS | Review and work on edits to memorandum in support of<br>ex parte for an order shortening time for writ hearing.   | 355.00 | 1.70  | 603.50 |

|                         | lumber: 2403 - 002 .<br>It No: 150903   | st   | anuary 10,<br>Pa       | 2018<br>age <b>2</b> |
|-------------------------|---|--|------------------------|----------------------|
|                         |   | Rate   | Hours                  |                      |
| 12/05/17 RSB            | Finalize writ/ex parte application and all supportin<br>documentation.  |  | 0.60                   | 135.00               |
| 12/05/17 DSD            | Discussion with Joe on arguments as to damages injury.  | s and 415.00   | 0.50                   | 207.50               |
| 12/05/17 DSD            | Analyze and work on arguments as to injury.   | 415.00   | 1.80                   | 747.00               |
| 12/05/17 DSD            | Final motion for peremptory writ.   | 415.00   | 1.50                   | 622.50               |
| 12/05/17 DSD            | Final declaration of Cotton; discussion with Darry  | l. 415.00  | 0.20                   | 83.00                |
| 12/05/17 DSD            | Correspondence to counsels with notice of ex par  | rte, 415.00  | 0.20                   | 83.00                |
| 12/06/17 DSD            | Discussion with Joe finalizing motion on writ.  | 415.00   | 0.40                   | 166.00               |
| 12/06/17 DSD            | Finalize motion on writ.  | 415.00   | 0.40                   | 166.00               |
| 12/06/17 DSD            | Revise declaration of Darryl per his comments.  | 415.00   | 0.50                   | 207.50               |
| 12/06/17 DSD            | Further work on P&A to focus on arguments and length.   | reduce 415.00  | 0.70                   | 290.50               |
| 12/07/17 DSD            | Appear at ex parte hearing on writ.   | 415.00   | 0.80                   | 332.00               |
|                         | Recapitulation  |  |                        |                      |
|                         |   | Rate   | Hours                  |                      |
| DSD                     | David Demian - Partner  | 415.00   | 15.30                  | 6,349.50             |
| RSB                     | Rishi S. Bhatt - Associate  | 225.00   | 3.30                   | 742.50               |
| SLH                     | Steven L. Hwang - Associate   | 300.00   | 2.20                   | 660.00               |
| CRS                     | Christopher Sillari - Partner   | 355.00   | 1.70                   | 603.50               |
| ACW                     | Adam C. Witt - Associate  | 330.00   | 1.90                   | 627.00               |
| For Curre               | ent Services Rendered   |  | 24.40                  | \$8,982.50           |
|                         | Expenses/Advances   |  |                        |                      |
| Date                    | Description   |  | ۰ Am                   | ount                 |
| 12/07/17                | Vendor fee of ex parte application, memorandum a<br>David Demian. Inv. No. 4235732 - Knox Attorney  |  | - 1                    | 3.95                 |
| 12/11/17                | One Legal's fee for e-filing of substitution of attorn<br>11145392 - One Legal LLC  |  |                        | 9.95                 |
| Total Expenses/Advances |   |  | \$213.90               |                      |
|                         | Total Current   | Work   | \$9,19                 | 06.40                |
|                         | Previous Ba   |  |                        | 24.08                |
|                         |   | lance  | 32,82                  |                      |
|                         | Payments/Adjustments Since La   |  |                        | -0.00                |
|                         |   | st Bill  |                        | -0.00                |
| ſ                       | Payments/Adjustments Since La   | st Bill<br>9 Due   | \$42,02                | -0.00                |
| ł                       | Payments/Adjustments Since La<br>Balance  | st Bill<br>Due<br>ncluded in this state                                      | \$42,02                | -0.00                |
| ł                       | Payments/Adjustments Since La<br>Balance<br>Payments received after January 10, 2018 are not in   | st Bill<br>Due<br>ncluded in this state<br>NTON & BAIRD, LI                  | \$42,02                | -0.00                |
|                         | Payments/Adjustments Since La<br>Balance<br>Payments received after January 10, 2018 are not in<br>Please make checks payable to: FINCH, THOR | st Bill<br>Due<br>ncluded in this state<br>NTON & BAIRD, LI<br>invoice date. | \$42,02<br>ment.<br>_P | -0.00                |

.

.

To pay online visit: http://www.ftblaw.com/bill-pay/

# FINCH THORNTON BAIRD

ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121 r 858.737.3100 r 858.737.3101 ftblaw.com

Mr. Darryl Cotton 6176 Federal Boulevard San Diego, CA 92114

ŧ

. . ....

January 10, 2018 Account No: 2403-004 Statement No: 150905

For Legal Services Rendered through December 31, 2017

\$40,009.02

Re: adv. Larry Geraci

|          |      |   | Rate   | Hours |          |
|----------|------|---|--------|-------|----------|
| 12/01/17 | RSB  | Conference about lodging objections to Geraci's notice of deposition and accompanying production request.   | 225,00 | 0.20  | 45.00    |
| 12/01/17 | RSB  | Perform final analysis on the probability that Cotton will be<br>able to obtain a TRO or a Preliminary Injunction as a way<br>to force Geraci to quickly settle the case. | 225.00 | 0.30  | 67.50    |
| 12/01/17 | RSB  | Analyze timing of when Cotton's objections to Notice of Deposition are due.   | 225.00 | 0.40  | 90.00    |
| 12/01/17 | RSB  | Further revise discovery responses.   | 225.00 | 0.20  | 45.00    |
| 12/01/17 | CRS  | Review draft discovery responses and work on edits to same.   | 355.00 | 1.80  | 639.00   |
| 12/01/17 | CRS  | Conference regarding objections to deposition notice and requests for documents, and work on strategy for same.   | 355.00 | 0.40  | 142.00   |
| 12/01/17 | CRS  | Conference regarding materials and outline to prepare for depositions.  | 355.00 | 0.20  | 71.00    |
| 12/01/17 | RSB  | Analyze California law regarding the one-year statute of<br>limitations.  | 225.00 | 1.20  | 270.00   |
| 12/01/17 | CRS  | Conference regarding primary contract theory of case and strategy for defense of their alleged contract.  | 355.00 | 0.50  | 177.50   |
| 12/01/17 | R\$B | Conference about dedication of property to the City of San Diego.   | 225.00 | 0.20  | 45.00    |
| 12/01/17 | CRS  | Work on framework for stipulation on CUP and in the alternative, a narrow order for ex parte relief.  | 355.00 | 0.80  | 284.00   |
| 12/01/17 | RSB  | Continue analyzing how to frame the theory of the case for<br>purposes of Cotton's upcoming discovery responses and<br>deposition.  | 225.00 | 1.20  | 270.00   |
| 12/01/17 | ACW  | Work on document production requests in connection with deposition notices to Geraci and Berry.   | 330.00 | 1.40  | 462.00   |
| 12/01/17 | D\$D | Work on case arguments for ex parte and detailed correspondence to Joe and Darryl with strategy for motions.  | 415.00 | 3.20  | 1,328.00 |
| 12/01/17 | DSD  | Conference as to attorney-client privilege issues in case and analyze same.   | 415.00 | 0.50  | 207.50   |

**Total Balance Due** 

|      |                      |       | umber: 2403 - 004<br>No: 150905  | Ja     | nuary 10, 20<br>Page |        |
|------|----------------------|-------|--|--------|----------------------|--------|
|      |                      |       |  | Rate   | Hours                |        |
|      | 12/02/17             | RSB   | Continue analyzing how attorney-client privilege may apply to Joe Hurtado.   | 225.00 | 0.90                 | 202.50 |
|      | 12/03/17             | RSB   |  | 225.00 | 3.50                 | 787.50 |
|      | 12/03/17             | ÇRS   | Conference regarding application of attorney-client privilege for communications between Darryl and Hurtado.   | 355.00 | 0.30                 | 106.50 |
|      | 12/04/17             | RSB   | Review proposed email to Geraci's attorney, Michael<br>Weinstein, regarding a proposed stipulation pertaining to<br>the CUP application (0.1); provide feedback (0.2)  | 225.00 | 0.30                 | 67.50  |
|      | 12/04/17             | CRS   | Work on strategy for seeking TRO in addition to ex parte relief on the Writ.   | 355.00 | 0.80                 | 284.00 |
|      | 12/04/17             | RSB   | Begin drafting the injunctive order for the Court to sign.   | 225.00 | 1.00                 | 225.00 |
|      | 12/04/17             | RSB   | Review Hurtado's memo regarding the issuance of a TRO.   | 225.00 | 0.20                 | 45.00  |
|      | 12/04/17             | RSB   | Continue drafting injunction.  | 225,00 | 1.10                 | 247.50 |
|      | 12/04/17             |       | Work on revisions to proposed order for ex parte hearing on TRO.   | 355.00 | 0.30                 | 106.50 |
|      | 12/04/17             | CRS   | Work on framework and strategies for memorandum in support of ex parte for TRO.  | 355.00 | 1.50                 | 532.50 |
|      | 12/04/17             | ACW   | Conference to work on strategy for ex parte application for injunctive relief.   | 330,00 | 0.30                 | 99.00  |
|      | 12/05/17             | RSB   | Revise ex parte application.   | 225.00 | 1.40                 | 315.00 |
|      | 12/05/17             |       | Review Hurtado's email regarding lis pendens and attorney fees (0.2); analyze cases cited therein (0.4).   | 225.00 | 0.60                 | 135.00 |
|      | 12/05/17             | RSB   | Revise Cotton declaration to contain the terms of the parties' contract and to contain the Geraci-Cotton email exchange reflecting the same.                           | 225.00 | 2.50                 | 562.50 |
|      | 12/05/17             | RSB   | Continue to revise TRO for tomorrow's ex parte hearing.  | 225.00 | 3.00                 | 675.00 |
|      | 12/05/17             |       | Further revise ex parte application materials for tomorrow.  | 225.00 | 2.50                 | 562.50 |
|      | 12/05/17             |       | Work on memorandum in support of TRO and strategize for order in support of same.  | 355.00 | 2.00                 | 710.00 |
|      | 12/05/17             | RSB   | Further work on ex parte application and TRO for tomorrow.   | 225.00 | 1.50                 | 337.50 |
| -    | 12/05/17             | DSD   | Work on motion for TRO, arguments on breach of contract.   | 415.00 | 2.10                 | 871.50 |
| 69 V | 12/05/17             | DSD   | Work on motion for TRO, revise declaration of Cotton.  | 415.00 | 1.50                 | 622.50 |
|      | 12/05/17             |       | Work on Declaration of Demian in support of TRO.   | 415.00 | 0.50                 | 207.50 |
|      | 12/05/17             |       | Correspondence to counsels with notice of ex parte.  | 415.00 | 0.20                 | 83.00  |
|      | 12/06/17             |       | Perform last minute revisions to the TRO and ex parte that is going out today.   | 225.00 | 1.10                 | 247.50 |
|      | 12/06/17             | DSD   | Discussion with Joe no ex parte for TRO/PI.  | 415.00 | 0.30                 | 124.50 |
|      | 12/06/17             |       | Further work on motion arguments for writ as to<br>Schweitzer section on CUP timing; work on declaration as  | 415.00 | 0.30                 | 124.50 |
|      | 12/06/17             | DSD   | to same.<br>Review declaration exhibits of Darryl and revise   | 415.00 | 0.50                 | 207.50 |
|      | 12/06/17             | ÇRS   | numbering.<br>Conference regarding last changes to memorandum in   | 355.00 | 0.30                 | 106.50 |
|      | 10100117             |       | support of TRO.<br>Conference regarding objections to deposition notices.  | 355.00 | 0.30                 | 106.50 |
|      | 12/06/17<br>12/06/17 |       | Prepare responses to document demands by Geraci as<br>part of Darryl deposition; review prior responses and<br>document production; discussion with Darryl as to same. | 415.00 |                      | 290.50 |
|      | 12/06/17             | חפח ז | Final motion for TRO for filing.   | 415.00 | 1.50                 | 622.50 |
|      | 12/06/17             |       | Appear at ex parte on TR/preliminary injunction (1.0).   | 415.00 |                      | 415.00 |
|      |                      |       |  |        |                      |        |

the second

alteration in the second

.

were not the state

Â

**1**2

ł

1017

.

|              | lumber: 2403 - 004<br>it <b>No: 150905</b>  | Ja  | nuary 10,<br>P | , 2018<br><b>'age 3</b> |
|--------------|---|---|----------------|-------------------------|
|              |   | Rate  | Hours          |                         |
| 12/06/17 DSD | Appear at ex parte on verified writ.  | 415.00  | 1.00           | 415.00                  |
| 12/07/17 DSD | Appear at ex parte hearing on TRO.  | 415.00  | 0.80           | 332.00                  |
|              | Recapitulation  |   |                |                         |
|              |   | Rate  | Hours          |                         |
| DSD          | David Demian - Partner  | 415.00  | 14.10          | 5,851.50                |
| RSB          | Rishi S. Bhatt - Associate  | 225.00  | 23.30          | 5,242.50                |
| CRS          | Christopher Sillari - Partner   | 355.00  | 9.20           | 3,266.00                |
| ACW          | Adam C. Witt - Associate  | 330.00  | 1.70           | 561.00                  |
| For Curre    | ent Services Rendered   |   | 48.30          | \$14,921.00             |
|              | Expenses/Advances   | مىيە ئىنىپىرىيە بىرىكىيە بىر تەرىپىرىكى بىرىكىيە.<br>سىرىپىرىيە بىرىكىيە بى | ····           |                         |
| Date         | Description   |   | An             | nount                   |
| 11/30/17     | Delivery of notice of deposition to Michael Weins<br>on November 30, 2017. Inv. No. 3497179 - Gol   | stein at Ferris & Britto<br>den State Overnight   |                | 16.59                   |
| 12/07/17     | Vendor fee for filing ex parte application, memor<br>of David Demian. Inv. No. 4235733 - Knox Attor | randum and declaration  | n 1            | 48,55                   |
| 12/11/17     | One Legal's fee for e-filing of substitution of atto<br>11145359 - One Legal LLC                    | rney. Inv. No.  |                | 9.95                    |
| Total Exp    | enses/Advances  |   | \$1            | 75.09                   |
|              | Total Curren  | it Work   | \$15,0         | 96.09                   |
|              | Previous E  | Balance   | 24,9           | 912.93                  |
|              | Payments/Adjustments Since I  | _ast Bill   |                | -0.00                   |
|              | Balan   | ce Due  | \$40,0         | 09.02                   |

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

Payment is due within 30 days of the invoice date.

Please contact us within 10 days of the invoice date with any questions. Thank you.

To pay online visit: http://www.ftblaw.com/bill-pay/





# EXHIBIT 13



Account: 1310536032 08 Date Mailed: 01/12/18

## Service Address: 6

## dress: 6176 FEDERAL BLVD

н

## URGENT NOTICE! PAYMENT REQUEST

## **RE-INSTATED SECURITY DEPOSIT**

We are requesting a \$4,267.00 Security Deposit. Your Security Deposit request, which was previously waived, is now being re-instated as your bills have not been paid on time.

A payment is requested in the amount of \$4,267.00 and must be received before the expiration date of 02/01/18 to avoid the disconnection of service.

There will be a charge if collection action is required. Please refer to the back of this notice for additional information.

The bottom portion of this notice must accompany your payment. If you intend to mail your payment, you should do so at least three business days prior to the expiration date of this notice.

You can also make your payment online at no charge. Go to sdge.com/myaccount. We also offer electronic payment services, such as SDG&E Pay-By-Phone and Automatic Pay. For your convenience, you can also pay by using most ATM cards, debit cards, MasterCard® and Visa® credit cards and electronic checks by calling BillMatrix at 1-800-386-0067.

|  | ACCOUNT NUMBER<br>1310 536 032 3 | DATE DUE                        | Feb 1, 2018  |
|--|----------------------------------|---------------------------------|--|
|  |                                  | AMOUNT DUE                      | \$4,267.00   |
| ADDRESS: 6176 FEDERAL BLVD SAN DIEGO 92114   |                                  | Plea                            | se enter amount enclosed.  |
| 4726.1.2.108 1 oz.                           |                                  | \$                              | 1  |
| իդիսիսիսիսիզինիիիիիիիիիինինեսինունի          | վեն                              |                                 | account number on check and ma<br>ble to San Diego Gas & Electric. |
|  |                                  |                                 |  |
| 6184 FEDERAL BLVD<br>SAN DIEGO CA 92114-1401 |                                  | SAN DIEGO GAS &                 | ELECTRIC   |
|  |                                  | PO BOX 25111<br>SANTA ANA CA 92 | 799-5111   |
|  |                                  |                                 |  |
|  |                                  | -                               |  |
| 3 7 00000131053                              | 60320000426700                   | 0000426200                      |  |



### NOTICE OF PAST DUE ACCOUNT AND IMPENDING DISCONNECTION IF YOU HAVE ANY QUESTIONS, PLEASE CALL 1-800-411-SDGE (7343) M-F 7AM - 8PM, SAT 7AM - 6PM

### Pay Before Date/Disconnection Policy

Your SDG&E bill is due and payable upon presentation and is past due if not paid within 19 days of the date mailed for residential customers or 15 days for non-residential customers. If your payment has not been received by the "Due Date" shown on your bill, your SDG&E service is subject to disconnection, after proper notice has been provided. If your service is disconnected for non-payment, there may be additional service charges and you will be required to pay all past due SDG&E amounts before service is restored. Your SDG&E service could also be disconnected if the information provided on your application for service is false, incomplete or inaccurate. SDG&E will disconnect your services only for non-payment of those charges owed SDG&E.

Residential customers who are unable to pay their SDG&E bill in full due to a temporary financial hardship or due to a serious illness in the household, oeed to call SDG&E before the expiration of this notice. Employees, including multilingual staff, are available to assist with payment arrangements.

If SDG&E fails to offer you payment arrangements, you may write to the Consumer Affairs Branch of the California Public Utilities Commission (CPUC), State Office Building, 505 Van Ness Avenue, Room 2003, San Francisco, CA 94102, email: consumer-affairs@cpuc.ca.gov, prior to disconnection of your SDG&E service. The Consumer Affairs Branch will review the complaint and issue its proposed resolution to you and SDG&E. If you are not satisfied, you may appeal the proposed resolution by filing a formal complaint. A more detailed explanation of disconnection policies, including your rights as an SDG&E customer, may be obtained by calling 1-800-411-SDGE (7343) Monday-Friday 7am-8pm, Saturday 7am-6pm; or e-mail: info@sdge.com.

### Re-Establishment of Credit/Deposit

If you pay your SDG&E bill after the expiration date of a past due notice, or for noo-residential customers, if your SDG&E bill becomes past due and a written notice for disconnection is mailed, you may be required to re-establish your credit by paying a deposit.

### **Rates And Rules**

SDG&E's rate schedules and rules, on file and approved by the CPUC, are available on the Internet at www.sdge.com. Copies of applicable tariffs may also be obtained by calling I-800-41I-SDGE (7343) or visiting any company bill payment office.

### **Disputed Bills**

If you dispute the SDG&E charges on your bill, which may include electric energy charges that reflect electricity provided by the State of California Department of Water Resources (DWR), please request an explanation from SDG&E within five days. If you still believe you have been billed incorrectly, the full amount of the SDG&E charges and DWR charges on the bill should be deposited with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 2003, San Francisco, CA 94 102, email: consumer affairs@cpuc.ca.gov, within 15 days of the mailing date of this past late notice to avoid disconnection of your SDG&E service. Make the remittance payable to the CPUC, not SDG&E.

Residential customers may, in lieu of depositing the full amount of disputed bills with the CPUC, agree to an installment plan with SDG&F. A complaint may still be filed with the CPUC by stating your claim in writing and by providing supporting documentation.

The CPUC will not accept deposits when the dispute appears to be over matters that do not directly relate to the accuracy of the bill. Such matters include the quality of the utility's service, general level of rates, pending rate applications, and sources of fuel power that are used to generate power.

Failure to make the deposit to the CPUC or payment arrangements with SDG&E by the expiration date of a past due notice, may result in the disconnection of your SDG&E service.



**PLEASE NOTE:** This deposit less the amount of any unpaid bills will be refunded together with any interest due at the rate determined in accordance with the utility's Rule 7, Deposits, upon discontinuance of service or after the deposit has been held for 12 consecutive months during which time continuous gas and/or electric service has been received, and all bills for such service have been paid within the allowed number of days from the date mailed, in accordance with the Rules as approved by the Public Utilities Commission of the State of California.

No interest will be paid if service was temporarily or permanently disconnected for non-payment of bills within the past 12 months, or the account was past due more than once during the past six months or more than twice during the past 12 months.

Refund will be made by application to the account or by check, in which case endorsement of the check will constitute acknowledgement of receipt of refund and release the utility from any further claims against the deposit covered by this notice.





JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

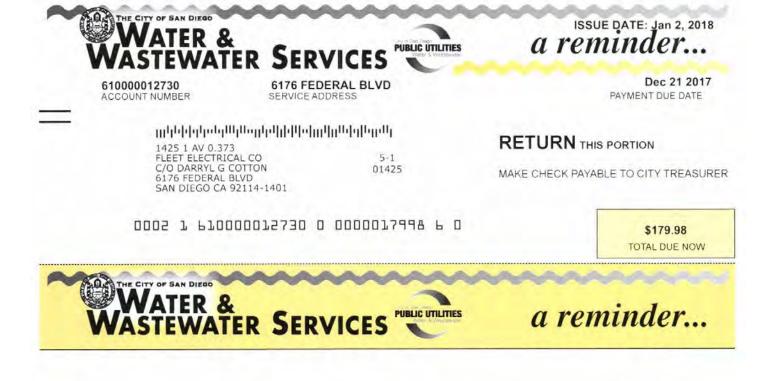
-

| ACCOUNT NO. 610000247582 DARRYL G COTTON<br>SERVICE ADDRESS 6184 FEDERAL BLVD | Dec 21 2017<br>PAYMENT WAS DUE       |        | 250.41<br>NOW DUE |
|---|--------------------------------------|--------|-------------------|
| THE CITY OF SAN DIEGO • PUBLIC UTILITIES DEPAR                                | TMENT • (619) 515-3500 • KEEP THIS P | ORTION | UW-1457 (9-13)    |
|   |                                      |        | 1024              |

| Payments Information   | Contact Information   |
|--|---|
| Make Checks Payable to City Treasurer  | www.sandiego.gov/publicutilities/customerservices   |
| Online<br>www.sandiego.gov/customercare<br>By Mail<br>Public Utilities Department  | Customer Care<br>(619) 515-3500<br>(858) 755-7211<br>(760) 489-8673   |
| Customer Care Center<br>PO Box 129020<br>San Diego, CA 92112-9020  | Emergency Service & Repairs (24 Hours)<br>(619) 515-3525<br>(858) 755-0365  |
| In Person (please bring both portions of bill)   | (760) 489-0140  |
| City Treasurer – Cashier<br>Cash, Check, Debit Card, MasterCard/Visa/Discover Card<br>Civic Center Plaza<br>1200 3rd Ave – Lobby<br>Public Utilities Department<br>Cash, Check, Debit Card, MasterCard/Visa/Discover Card<br>525 B Street – Ground Floor<br>Authorized Payment Agencies<br>www.sandiego.gov/publicutilities/customerservices | Public Utilities Department<br>Customer Support Division<br>Customer Care Walk-In Payment Center<br>525 B Street - Ground Floor<br>San Diego, CA 92101<br>Hours: Monday - Friday 8 a.m 5 p.m.                             |
| Payment is due on or before the Payment Due Date,<br>If not paid within this time, service may be discontinued.<br>Disputed Payment Amounts should be paid to avoid<br>interruption of service. Investigations are made upon<br>request. Adjustments, when warranted, are made only after<br>completion of an investigation.                 | Assistance for speech and hearing impaired customers is<br>available via California relay services at 1-800-735-2929<br>(TT/TDD). Alternate formats available upon request of<br>qualified individuals with disabilities. |
| In The Event Service is Discontinued for service to be restored payment must be made and reported to Customer Care (619) 515-3500. Service will be restored before the end of the following business day.  |   |
| A Payment Return Fee will be assessed for any payment returned by the bank.  | é   |

## The City of San Diego • Public Utilities Department Federal Tax ID# 95-6000776

.....



JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

| ACCOUNT NO. 610000012730 FLEET ELECTRICAL CO<br>SERVICE ADDRESS 6176 FEDERAL BLVD | Dec 21 2017                                  | \$179.98              |
|---|--|-----------------------|
| SERVICE ADDRESS 6176 FEDERAL BEVD   | PAYMENT WAS DUE                              | TOTAL NOW DUE         |
| THE CITY OF SAN DIEGO • PUBLIC UTILITIES DEPA                                     | RTMENT • (619) 515-3500 • <b>KEEP</b> THIS P | ORTION UW-1457 (9-13) |

| Payments Information   | Contact Information   |
|--|---|
| Make Checks Payable to City Treasurer  | www.sandiego.gov/publicutilities/customerservices   |
| Online<br>www.sandiego.gov/customercare<br>By Mail<br>Public Utilities Department<br>Customer Care Center<br>PO Box 129020<br>San Diego, CA 92112-9020<br>In Person (please bring both portions of bill)   | Customer Care<br>(619) 515-3500<br>(858) 755-7211<br>(760) 489-8673<br>Emergency Service & Repairs (24 Hours)<br>(619) 515-3525<br>(858) 755-0365   |
| City Treasurer – Cashier<br>Cash, Check, Debit Card, MasterCard/Visa/Discover Card<br>Civic Center Plaza<br>1200 3rd Ave – Lobby   | (760) 489-0140  |
| Public Utilities Department<br>Cash, Check, Debit Card, MasterCard/Visa/Discover Card<br>525 B Street - Ground Floor<br>Authorized Payment Agencies<br>www.sandiego.gov/publicutilities/customerservices   | Public Utilities Department<br>Customer Support Division<br>Customer Care Walk-In Payment Center<br>525 B Street - Ground Floor<br>San Diego, CA 92101<br>Hours: Monday - Friday 8 a.m 5 p.m.                             |
| Payment is due on or before the Payment Due Date.<br>If not paid within this time, service may be discontinued.<br>Disputed Payment Amounts should be paid to avoid<br>interruption of service. Investigations are made upon<br>request. Adjustments, when warranted, are made only after<br>completion of an investigation. | Assistance for speech and hearing impaired customers is<br>available via California relay services at 1-800-735-2929<br>(TT/TDD). Alternate formats available upon request of<br>qualified individuals with disabilities. |
| In The Event Service is Discontinued for service to be restored payment must be made and reported to Customer Care (619) 515-3500. Service will be restored before the end of the following business day.  |   |
| A Payment Return Fee will be assessed for any payment returned by the bank.  | \$  |

## The City of San Diego • Public Utilities Department Federal Tax ID# 95-6000776



ACCOUNT NUMBER 1310 536 032 4 SERVICE FOR DARRYL COTTON 6176 FEDERAL BLVD SAN DIEGO, CA 92114

DATE MAILED Jan 12, 2018 Page 1 of 6 www.sdge.com 1-800-336-SDGE (7343) English 1-800-311-SDGE (7343) Español 1-877-889-SDGE (7343) TTY M-F, 7am-8pm, Sat, 7am-6pm 24 Hour Emergency Service

#### **Account Summary**

| Previous Balance | \$2,120.28 |
|------------------|------------|
| Payment Received | 00         |
| Past Due Balance | \$2,120.28 |
| Current Charges  | + 1,098.80 |
| Total Amount Due | \$3,219.08 |

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

| Summary         | of Current Charges                |           | (See page 2 for details) |
|-----------------|-----------------------------------|-----------|--------------------------|
|                 | Billing Period                    | Usage     | Amount(\$)               |
| Electric        | Dec 10, 2017 - Jan 10, 2018       | 4,561 kWh | 1,083.96                 |
| Delayed Paymer  | nt Charge (.7% on balance of \$2, | 120.28)   | 14.84                    |
| Total Charges t | his Month                         |           | \$1,098,80               |

#### **Regulatory Notices**

All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

| 1 | DATE DUE   | ON RECEIPT |  |
|---|------------|------------|--|
|   | AMOUNT DUE | \$3,219.08 |  |

Electric Usage History (Total kWh used)

| Flooring and            |                  | 1               | 1 4000            |
|-------------------------|------------------|-----------------|-------------------|
| 8500                    |                  |                 |                   |
| 8800                    |                  | -               |                   |
| 5100                    |                  |                 |                   |
| 3400                    |                  |                 |                   |
| 1700                    |                  |                 |                   |
| 0                       |                  |                 |                   |
| JAN FEB MA              | r apr may jun ju | L AUG SEP OCT I | NOV DEC JAN<br>18 |
|                         | Jan 17           | Dec 17          | Jan 18            |
| fotal kWh used          | 5,209            | 5,531           | 4,561             |
| Daily average kWh       | 168.0            | 172.8           | 147.1             |
| Days in billing cycle   | 31               | 32              | 31                |
| Change in daily average | from last mont   | th              | - 14.9%           |
| Change in daily average | from last year   |                 | - 12.4%           |
| Max monthly demand      | 16.3             | 17.1            | 16.0              |
| Max annual demand       |                  |                 |                   |

See Time of Use - Electricity information on page 3.

PLEASE KEEP THIS PORTION FOR YOUR RECORDS (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS) PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO )



SERVICE ADDRESS: 6176 FEDERAL BLVD SD 92114

4723.163.3717.1933536 1 AV 0.373 oz 0.922 [իկկլինիկկիս]]ինոկիսիկին]իկենուիկոլ]]ի DARRYL COTTON 6184 FEDERAL BLVD SAN DIEGO CA 92114-1401

ACCOUNT NUMBER Save Paper & 1310 536 032 4 PAY ONLINE www.sdge.com

Postage

DATE DUE ON RECEIPT

AMOUNT DUE \$3.219.08

Please enter amount enclosed.

\$ Write account number on check and make

payable to San Diego Gas & Electric

SAN DIEGO GAS & ELECTRIC PO BOX 25111 SANTA ANA CA 92799-5111

4 2 90000131053603200001098800000321908

CY B

38

= =



ACCOUNT NUMBER 1310 536 032 4 DATE DUE ON RECEIPT DATE MAILED Jan 12, 2018

#### Page 2 of 6

TR

1-800-336-SDGE (7343) English 1-800-311-SDGE (7343) Español 1-877-889-SDGE (7343) TTY

www.sdge.com

н

#### Detail of Current Charges

#### **Electric Service**

| Rate: Time of Use - TOU-A-Commerce | climate Zone: Inland  |
|------------------------------------|---|
| Billing Period: 12/10/17 - 1/10/18 | Total Days: 31  |
| Meter Number: 06509045             | (Next scheduled read date Feb 9, 2018) Cycle 8                          |
| Meter Constant: 1.000              | Billing Voltage Level: Secondary  |
|                                    | ntly not subject to rotating outage.<br>bject to change without notice. |
|                                    |   |

#### Total Usage: 4,561 (Usage based on interval data)

#### ELECTRIC CHARGES

Customer Charge

Amount(\$) 30.00

| Electricity De | elivery (Details below) | 3,172 kWh |          |   |        |
|----------------|-------------------------|-----------|----------|---|--------|
| WINTER USAGE   | On-Peak                 |           | Off-Peak |   |        |
| kWh used       | 427                     |           | 2,745    |   |        |
| Rate/kWh       | \$.13007                |           | \$ 13007 |   |        |
| 21 Day Charge  | \$55.54                 | +         | \$357.04 | - | 412.58 |
| Electricity De | elivery (Details below) | 1,389 kWh |          |   |        |
| WINTER USAGE   | On-Peak                 |           | Off-Peak |   |        |
| kWh used       | 201                     |           | 1,188    |   |        |
| Rate/kWh       | \$.13736                |           | 5.13736  |   |        |
| 10 Day Charge  | \$27.61                 | +         | \$163.18 | = | 190.79 |

Rate Change This Billing Period:

There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

DWR Bond Charge

4,561 kWh x \$,00549

25.04

(Continued on next page)

#### Other Important Phone Numbers

For emergencies and to report outages, please call 24 hours a day, 7 days a week 1-800-611-7343

#### Payment Options \$

Online: It's fast, easy and free. Just register or sign into My Account at https://myaccount.sdge.com

Home banking: If you pay bills online through your bank, check with them to see if you can receive your bill online.

Automatic Pay: Have your payment automatically deducted from your account. For more information, call 1-800-411-SDGE (7343) or visit vwwv.sdge.com

Pay by Phone: Visit www.sdge.com to enroll. Once enrolled for pay by phone option, you may authorize a payment from your checking account any day up to and including the bill due date.

By Mail: Mail your check or money order, along with the payment stub at the bottom of your bill, in the enclosed envelope to SDG&E, PO Box 25111, Santa Ana, CA 92799-5111

ATM/Debit/Credit Card or Electronic Check: You can use most major ATM/Debit cards, MasterCard and Visa credit cards, or the Electronic Check thru BillMatrix A convenience fee is charged. Contact BillMatrix at 1-800-386-0067 or visit www.sdge.com/epay.

In Person: To find the nearest location and hours of operation, call 1-800-411-SDGE (7343) or visit www.sdge.com.

Need help paying your bill? Call us for programs and services at 1-800-411-SDGE (7343) or visit www.sdge.com.



ACCOUNT NUMBER 9185 520 600 4 SERVICE FOR DARRYL COTTON 6184 FEDERAL BLVD SAN DIEGO, CA 92114 DATE MAILED Jan 12, 2018 www.sdge.com 1-800-336-SDGE (7343) English 1-800-311-SDGE (7343) Español 1-877-889-SDGE (7343) TTY M-F, 7am-8pm, Sat, 7am-6pm 24 Hour Emergency Service

Savings Alert: California is fighting climate change and so can you! Your bill includes a Climate Credit from a state program to cut carbon pollution while also reducing your energy costs. Find out how at EnergyUpgradeCA.org/credit.

#### **Account Summary**

| Total Amount Due | \$1,565.67 |
|------------------|------------|
| Current Charges  | + 728.63   |
| Past Due Balance | \$837.04   |
| Payment Received | 00         |
| Previous Balance | \$837.04   |

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

#### **Summary of Current Charges**

| (See | page | 2 | for | de | tails, | ) |
|------|------|---|-----|----|--------|---|
|------|------|---|-----|----|--------|---|

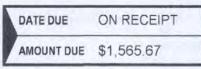
|               | Billing Period              | Usage     | Amount(\$) |
|---------------|-----------------------------|-----------|------------|
| Gas           | Dec 10, 2017 - Jan 10, 2018 | 18 Therms | 24.59      |
| Electric      | Dec 10, 2017 - Jan 10, 2018 | 1,485 kWh | 357.58     |
| Other Charges | s and Credits               |           | 346.46     |
| Total Charge  | s this Month                |           | \$728.63   |

#### **Regulatory Notices**

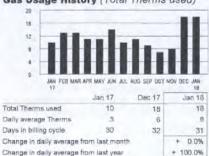
 All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

4723.163.3717.1933404 2 AV 0.373 oz 1.092

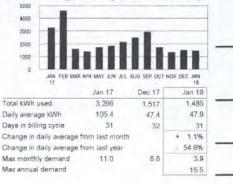
Ուկիլիիրդիրդիրինինինինինինինիներությունին



Gas Usage History (Total Therms used)



#### Electric Usage History (Total kWh used)



See Time of Use - Electricity information on page 3.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO )
Savo Pap
Postag
Postag
PAC
Sempra Energy utility\*

DARRYL COTTON

6176 FEDERAL BLVD

SAN DIEGO CA 92114-1401

SERVICE ADDRESS: 6184 FEDERAL BLVD SD 92114

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)

Save Paper & AC Postage 91 PAY ONLINE www.sdge.com

ACCOUNT NUMBER 9185 520 600 4 DATE DUE ON RECEIPT
AMOUNT DUE \$1,565.67

Please enter amount enclosed

\$ Write account number on check and make

payable to San Diego Gas & Electric

SAN DIEGO GAS & ELECTRIC PO BOX 25111 SANTA ANA CA 92799-5111

4 2 2000091855206000000728630000156567



20

23

Exhibit 1 to Darryl Cotton's Request for Judicial Notice Page 254 of 334

\$837.04 Gas U

7am-8pm, Sat, 7am-6pm lour Emergency Service

Page 1 of 7



ACCOUNT NUMBER 9185 520 600 4 DATE DUE ON RECEIPT

#### DATE MAILED Jan 12, 2018

#### Page 2 of 7

1-800-336-SDGE (7343) English 1-800-311-SDGE (7343) Español 1-877-889-SDGE (7343) TTY

www.sdge.com

#### Detail of Current Charges

#### **Gas Service**

Rate: GN3-Commercial

Meter Number: 01187950 (Next scheduled read date Feb 9, 2018) Cycle: 8

| Billing Period      | Days | Current<br>Reading | Previous<br>Reading | ÷ | Difference | x | Meter<br>Constant | x | The/m<br>Multiplier | Total | Therms |
|---------------------|------|--------------------|---------------------|---|------------|---|-------------------|---|---------------------|-------|--------|
| 12/10/17 - 01/10/18 | 31   | 435                | 418                 |   | 17         |   | 1.000             |   | 1.047               |       | 18     |

#### GAS CHARGES

#### Gas Service Rate Change This Billing Period:

There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

#### Customer Charge

| Gas Service   | (Details below) | 18 Therms            |                    |    |      |
|---------------|-----------------|----------------------|--------------------|----|------|
|               | 1000 Therms     | 1001 - 21,000 Therms | Over 21,000 Therms |    |      |
| Therms used   | 18              |                      |                    |    |      |
| Rate/Therm    | \$.41975        |                      |                    |    |      |
| 21 of 31 Days | \$5.12          |                      |                    |    | 5 12 |
| Therms used   | 18              |                      |                    |    |      |
| Rate/Therm    | \$.32890        |                      |                    |    |      |
| 10 of 31 Days | \$1.91          |                      |                    | 19 | 1.91 |

#### Gas Energy Rate Change This Billing Period:

There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

(Continued on next page)

Amount(\$)

10.00

#### Other Important Phone Numbers

For emergencies and to report outages, please call 24 hours a day, 7 days a week

#### Payment Options \$

Online: It's fast, easy and free, Just register or sign into My Account at https://myaccount.sdge.com

Home banking: If you pay bills online through your bank, check with them to see if you can receive your bill online.

Automatic Pay: Have your payment automatically deducted from your account. For more information, call 1-800-411-SDGE (7343) or visit www.sdge.com

Pay by Phone: Visit www.sdge.com to enroll. Once enrolled for pay by phone option, you may authorize a payment from your checking account any day up to and including the bill due date.

By Mail: Mail your check or money order, along with the payment stub at the bottom of your bill, in the enclosed envelope to SDG&E, PO Box 25111, Santa Ana, CA 92799-5111

ATM/Debit/Credit Card or Electronic Check: You can use most major ATM/Debit cards, MasterCard and Visa credit cards, or the Electronic Check thru BillMatrix. A convenience fee is charged. Contact BillMatrix at 1-800-386-0067 or visit www.sdge.com/epay.

In Person: To find the nearest location and hours of operation, call 1-800-411-SDGE (7343) or visit www.sdge.com.

Need help paying your bill? Call us for programs and services at 1-800-411-SDGE (7343) or visit www.sdge.com.



# EXHIBIT 14

#### DECLARATION OF DALE L. COTTON

1 I, Dale Lloyd Cotton, have personal knowledge of the facts I state below, and if I were to be 2 called as a witness, I could competently testify about what I have written in this declaration. 3 1 am a self-employed businessman and the First Trust Deed Holder of 6176 Federal 1 4 Boulevard San Diego, CA 92114; to which the title to that property is held by my son, Darryl 5 Gerard Cotton. 6 Darryl has been under extreme financial pressure from the litigation he is involved in and he 2. 7 has not been making the mortgage payments to me. He has been responsible in keeping me updated 8 9 through regular communication as to the status of that litigation. 10 3. That communication has made me very aware of the enormous stresses Darryl is undergoing 11 both emotionally and financially. 12 4. To be clear: were this a normal business relationship. I would have foreclosed on this 13 property a year ago. 14 But this is not a normal business relationship and I do want to help him and any of my 5. 15 children out to the fullest extent that I can. However, I am not a wealthy man, and this cannot 16 17 continue. 18 6. I respectfully request this court to consider what the effects of this needless, protracted 19 litigation has caused to not only Darryl, but to me as well, and please use whatever discretionary 20 authority you have to see that justice will eventually be served in this matter. 21 22 I declare under penalty of perjury under the laws of the Stat of California that the foregoing 23 is true and correct/ 24 2018 25 DATE DALFILOYD 26 27 28 SUPPORTING DECLARATION MENDORA



## EXHIBIT 15

|    | ļ   |
|----|-----|
| 1  |     |
| 2  |     |
| 3  |     |
| 4  |     |
| 5  |     |
| 6  |     |
| 7  |     |
| 8  |     |
| 9  |     |
| 10 |     |
| 11 |     |
| 12 |     |
| 13 |     |
| 14 |     |
| 15 |     |
| 16 |     |
| 17 |     |
| 18 |     |
| 19 |     |
| 20 | ļ   |
| 21 |     |
| 22 |     |
| 23 |     |
| 24 |     |
| 25 |     |
| 26 |     |
| 27 |     |
| 28 |     |
|    | -14 |

I, Darryl Gerard Cotton, hereby declare:

| 2        |    |   |
|----------|----|---|
| 3        | 1. | I have personal knowledge of the facts I state below, and if I were to be called as a             |
| 4        |    | witness, I could competently testify about what I have written in this declaration.               |
| 5        | 2. | This declaration is being prepared for this lawsuit, litigation matter and should lay out in      |
| 6        |    | detail all the pertinent facts and history of me, my business and the chronological events        |
| 7<br>8   |    | leading to and through the legal proceedings to date.   |
| 9        | 3. | It is the intent of this declaration to prove 6 things: 1) I have had a lifelong passion and      |
| 10       |    | interest in electricity and electrical designs; 2) I am a businessman, I have had numerous        |
| 11       |    | companies related to electricity; 3) I also have a lifelong interest in plants and crops; 4) I am |
| 12       |    | involved in and proud of my political activism; 5) Larry Geraci is attempting to defraud me       |
| 13       |    | of my property and; 6) My former counsel FTB is also likely guilty of fraud.                      |
| 14       | 4. | It is important to me that this reflect these issues, therefore I go to great lengths to describe |
| 15<br>16 |    | them.   |
| 17       | 5. | I was born in 1960 in Peoria, Ill. My father, Dale Lloyd Cotton, was a Mechanical Engineer        |
| 18       |    | who worked for the Electromotive Company (EMD) as a Process Engineer, just outside of             |
| 19       |    | Chicago, Ill. My mother, Therese Marie Cotton, was a chemist who worked at various                |
| 20       |    | universities. I had one brother, Gregory, and a sister, Christine, from their marriage.           |
| 21       | 6. | Some of my earliest and fondest memories growing up were of having my parents take us to          |
| 22       |    | their respective workplaces. At Christmas, EMD would open their entire facility up for            |
| 23<br>24 |    | tours where everyone could see the factory and all the locomotives in various stages of           |
| 25       |    | construction. My father would walk us around and point out where he worked and explain            |
| 26       |    | his job of engineering the manufacturing processes that would produce those enormous              |
| 27       |    | locomotives that were sold all over the world. Touring that factory, I saw what seemed like       |
| 28       |    |   |
|          |    | - 1 -<br>SUPPORTING DECLARATION   |
|          |    |   |

| 1        |    | an important part of what society needed in its everyday life of moving goods from one        |
|----------|----|---|
| 2        |    | point to another. I was very proud of my dad and the work he did for EMD.                     |
| 3        | 7. | Since my father grew up in the farming area of Southern Illinois, at 13 years old I was given |
| 4        |    | a chance to work one summer detasseling corn. It was very hard work, but I stuck with it      |
| 5        |    | and learned to appreciate what it takes to get these crops to harvest. Visiting my            |
| 6        |    | grandparents, and that summer working in the farms in Mendota, Illinois, sparked my early     |
| 7<br>8   |    | interest in plants and crop science.  |
| 9        | 8. | When my mother took me to her job, I got a chance to see the work she was doing toward        |
| 10       |    | her thesis in Raman Spectroscopy. This is the science that involves determining the           |
| 11       |    | molecular identity of an object using light. As light bombards the object, the return or      |
| 12       |    | reflection of that light creates a signature in frequency and wavelength that can be          |
| 13       |    | characterized in a nondestructive fashion by the object's unique molecular identity. I would  |
| 14<br>15 |    | often accompany my mother to her labs at Argonne National Labs and Northwestern               |
| 16       |    | University to see her equipment and experiments underway. I got to sit in with her and her    |
| 17       |    | colleagues when they would discuss advanced physics and particle science. Of course, these    |
| 18       |    | topics were well over my head, but I always made sure they at least attempted to explain      |
| 19       |    | what they were talking about, in terms I might be able to grasp. In deference to my mother,   |
| 20       |    | and because they probably enjoyed the challenge, her colleagues would usually take the time   |
| 21       |    | to do so and show me what the equipment was doing in their experiments. I was thrilled to     |
| 22<br>23 |    | understand, at least in a broad sense, what it was their work entailed.                       |
| 23       | 9. | There is no doubt that my interest in electricity and light, came from exposure to the work   |
| 25       |    | my mother had been doing, and the efforts she and her colleagues made to explain to their     |
| 26       |    | work to me. Later in life, I would, on occasion, accompany her as she gave lectures around    |
| 27       |    | the world to other academics on her work, and it became increasingly evident to me, that she  |
| 28       |    | was respected as an innovator in her field. I could only hope that I would have an            |
|          |    | SUPPORTING DECLARATION  |
| l        | 1  |   |

.

opportunity to contribute to the world in as meaningful a way as she had. Sadly, my mother died in 1999 but her memory and work will live on forever. It is a goal of mine to emulate her personality, and the way she affected those around her, in the same positive ways she did.

10. At a very young age, I found that I was really interested in politics and what was going on in the world. I even have a vague recollection of being 3 years old and sensing something was horribly wrong when the world seemed to stop with the assassination of John F.

Kennedy. We all just stood there, staring at the TV, and the busy street that normally had cars flying down it, was quiet. There was no traffic. Time stood still. After that, having lived through the Vietnam war, Watergate, Nixon, Martin Luther King, and other such events, I can't recall ever not having an interest in politics and the law and their effects on the world we lived in. I found it exciting and fascinating.

11. My parents went through a horrible divorce when I was 13 years old. There was bitter fighting over who would get what and it led to a serious and permanent fracturing of our family. I'll never forget the tug of war and the lawyers coaching us as to what to say so we would be able to support whatever was expected to be said when we stood in front of the judge. Having to pick sides between your parents is not something that you would ever want a child to do but that is essentially what we had to do. What happened is that the boys went to my father and my sister went to my mother. Life as we knew it would never be the same.

12. From the time I was 13 to 15 years old, my brother and I were basically on our own. My dad worked full time, and during his off time, he sought out new relations that would rebuild our household. My brother and I resisted these new women coming into our lives, trying to assume the position that had been our mother's, so we rebelled. We did not make it easy on these women and they would leave. This, coupled with the fact we were acting like normal SUPPORTING DECLARATION

teenagers, caused a lot of friction with my dad. Eventually my father farmed out my brother Gregory, who was just 12 years old at the time, to a family down the street from us who agreed to take him in. I lived with my dad until I was 15 years old, when he agreed to my moving out.

13. In 1972 I became aware of a considerable buzz being created by then President Nixon having appointed a commission, known as the Shafer Commission, to study, compile information on, and report back to him what effects cannabis was having on our youth. It was clear to us from Nixon's statements that he did not want to see cannabis become acceptable at any level. He needed federal drug policy to make cannabis use a criminal act. Nixon saw cannabis being used by a bunch of war protesters who would sit around smoking weed and creating havoc, over him and his policies, so he needed it stamped out. He needed a way to give the federal government the tools to do that. To that end, he created the Shafer Commission, whose sole purpose he believed was to come back with findings that supported his beliefs. Nixon needed findings that would claim cannabis was evil, dangerous, and a threat to society. Unfortunately for Nixon, after an exhaustive, comprehensive, and nonpartisan analysis of the effects of cannabis, they came back with just the opposite opinion.

14. When the Shafer Commission came back with their report, they relied on research that had been done by UC San Francisco chemistry students who were interested in finding out why the same strain of cannabis could make one person laugh and another contemplative. They appreciated that there was the potential to use cannabis as medicine and they recommended that further research be done to see what biochemistry was at work. What they discovered was the beginning of why the science of this plant needs to be better understood. Relying on that research, and other studies from around the world, created a situation where Nixon could not accept the findings and would not release the report in the form that he had SUPPORTING DECLARATION

received it. Nixon ignored the Commission's recommendations and went on to create the Controlled Substances Act. He eventually resigned and was then pardoned by his replacement, Jerry Ford. One of the first things Ford did was give the Shafer Commission report to Big Pharma so that they could "continue" the research that had been done by others, while it was kept from the public for over 40 years.

15. In 1975 I moved into my own room at a boarding house known as The Stone House. The Stone House was run by a little old lady who went by Marty. Marty was an exceptionally sweet person who had an incredible affection for birds. She had hundreds of finches in the basement and would spend hours with them. What Marty was not always very good at was noticing what her tenants were up to, and by that, I mean, more than a few of her tenants were heroin addicts, who lived there because it was cheap, and Marty loved them unconditionally, as if they were her own.

16. When Marty first met me, she was not ready to rent a room to a 15-year-old boy but since I was personable, had a job working part time for Horton Electric, a local electrical and lighting company, and was going to high school 1 block away from the Stone House, Marty decided to take a chance and let me move into my own room. This was important, not only because I got to understand self-responsibility at a very young age, but also because it gave me the opportunity to see how those other boarders made their living and survived as adults.

17. The Stone House was a large 3 story house and the attic floor was the most desirable of all the floors. This is where, in the evenings, the rooms would open up and there would be free flowing music, conversation, drinking, drugs (only cannabis and psilocybin for me), and discussions on everything imaginable including politics, the Vietnam war, President Nixon, relationships, and girls. People came from all over to attend these evening soirces. They were lively and fun, but they had purpose too. We were in the midst of revolt and SUPPORTING DECLARATION

revolution. There was Kent State. There was Watergate. There was George McGovern. There was talk of impeachment. There was the Shafer Commission. There were body bags of soldiers fighting in a war that had no meaning. There were refugees. There was Jimmy Carter. There was Lieutenant Calley. There were lines of people waiting to buy gasoline. There was upheaval. I was taking it all in. Living at the Stone House taught me to think for myself, to question those who would manipulate the system on behalf of their own special interests, to help educate others, as I had been, and finally to cherish the Constitution as it is a living, breatling document that must be the center of our universe and not be taken for granted or the freedom we cherish will be lost forever. The tree of liberty will not be taken down with a single swing of the axe, but in a slow and steady process whereby one day you look up and the tree is gone. As citizens of this great country, we have a responsibility to protect ourselves and those around us from letting that happen. That is the message I took from the Stone House. 18. While Stone House helped form some of my early political ideologies, it also got me to question drugs, both legal and illegal, and the influence they had on people's lives. When the parties died down, it was always just me and the other boarders who had all taken me under their wings and mentored me. I got to see them as they really were. Even though some of them got into things that I would never try, such as heroin, I respected that they were clear to me why they did these drugs and why they would never want to see me doing them. I watched them go through the process of attaining the drugs and the rituals that went with getting the drugs into their systems. While they were certainly consumed by their addictions, they also seemed to care about the young man living in their Stone House and did not want to see me make the same mistakes they had. I respected them and their intellects. However, I saw firsthand how heroin would ravish them and ultimately, they would overdose, and some would even die. It was tough knowing that these drugs took SUPPORTING DECLARATION

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

control of young people who could have been assets to our world. I knew then and there that I would never subject myself to a drug, legal or not, that took over my life. Instead I would always maintain an interest in how drugs could be used to provide relief, repair or prevention of disease without the addictive elements that consumed those who took them.
19. After a couple of years of living in the Stone House, I had saved and was making enough money at Horton Electric to move into my own house. In 1977, at the age of 17, I kissed Marty goodbye, thanked her for everything she had done for me, and moved into my own house.

20. At the time I rented my own house, I had been working part time for Horton Electric for almost 3 years. I initially started out working in the warehouse stocking inventory but, since I was always interested in what those electrical parts did, I'd ask a lot of questions of those who worked there. That got me to understand the business to the point that, at just 16 years old, I got to move up to the electrical sales desk. In that capacity, I got to meet with customers, helped fill orders and realized that building and wiring things was incredibly rewarding.

21. While I appreciated the opportunity to work in electrical sales, I lobbied hard to get transferred to the electrical construction side of the company. I had already been dreaming of someday becoming an electrical contractor. The contracting side of Horton Electric was run by a surly old Irishman by the name of Chris who wanted nothing to do with having a young kid working around him and his electricians, but I didn't give up and I eventually got on his good side. Once I did, it was the best thing that could have happened to me. I got direction. I got focus. This shop was well established and serviced all the surrounding area. Chris was very well respected, and by me representing him, by way of delivering materials and getting to know the union electricians, I had an opportunity to see how the electrical construction side of the business operated. I'm a quick study but there was no way SUPPORTING DECLARATION

that, without formal training, I was going to learn the electrical contracting trade unless I got a break. That break came when one of the union electricians I was working with decided that I was worthy of baptism by fire. As much as Chris got to know and rely on me, he knew that my heart was in becoming an electrician and one day running my own business, so he got me onto a union job that needed more electricians than the hall had available at the time. I was given an opportunity to become a walk-on electrician for a huge condominium project being built outside Chicago. While I had some experience in bending conduit and running wire, I was not up to the skill levels that were required to maintain that job. I was not going to lose that job, so I would actually stay after hours to practice bending conduit to improve my production levels. When the project foreman found out I was doing that, he was not happy about it, and told me in no uncertain terms that, if I ever did anything off the clock, I would be terminated. However, he liked that I wanted to succeed and paired me with another walk-on electrician who was so good he was out-producing the union electricians by nearly twice the production per day. John was good. Very good. He had methods and techniques that allowed him alone to finish a one-bedroom condominium, completely piped in conduit and ready for drywall, in one day. I worked with John and learned every technique he had. Within a month, I was knocking out the same production levels he was. John went on to become a union electrician and stayed in Chicago. I could have gone that route too, but I wanted to eventually have my own business as I had seen Chris do at Horton Electric and, since the winters were brutal in Chicago and I had nothing keeping me in the Midwest, I decided to take my skill sets and move to a warmer year round climate. It was in 1980 that I made the decision to pack all my belongings up in a van and move to San Diego. 22. When I arrived in San Diego, I immediately got a job for the U.S. Navy working as an

electrician in the Public Works Center (PWC). While this was considered a temporary SUPPORTING DECLARATION

1

2

- 21 22 23
- 24 25 26
- 27

| Ì        |   |
|----------|---|
|          |   |
| 1        | position, my electrical skills and acumen put me in demand among the career, civil service      |
| 1        | electricians and allowed me to travel to many of the Southern CA naval bases while working      |
| 3        | on, and often being given a supervisory role in, some of the most sensitive and high-profile    |
| 4        | projects going at the time.   |
| 5        | 23. I had been working for PWC for 2 years when, in 1982, I was given an opportunity to make    |
| 6        |   |
| 7        | better money as the Electrical Superintendent for Dave Baker of Westland Electric. In this      |
| 8        | capacity, I would be responsible for running multiple large commercial projects. Dave hired     |
| 9        | me for this position because he knew, from people he knew at PWC, that I was                    |
| 10       | knowledgeable, organized, liaisoned well with our customers, and delegated authority,           |
| 11       | which resulted in my projects being completed on time and on budget.                            |
| 12       | 24. In 1983, I met Debra Holly and we started dating. We never married but stayed together for  |
| 13       | 14 years, during which time we had 2 beautiful daughters, Kimberly and Kristina. It was         |
| 14<br>15 | during those early years that Debra encouraged me to follow my dreams of owning and             |
| 16       | operating my own electrical contracting firm.   |
| 17       | 25. In late 1985, I started suffering from occasional nocturnal epileptic seizures. While it is |
| 18       | unknown as to what exactly is responsible for these seizures, it is believed that lack of sleep |
| 19       | and stress are significant contributing factors. I was originally prescribed Dilantin which     |
| 20       | worked but was known to cause problems within the liver and, since I also have the              |
| 21       | Hepatitis C virus, I was very concerned about the effects a prescription drug would have on     |
| 22       | my liver.   |
| 23<br>24 | 26. In 1987 I made the decision to start my own electrical contracting business and Fleet       |
| 24       | Electric, CA License Number 514234, began business out of my home in North Park. I              |
| 26       | managed to run and grow that business so that I needed to move into a larger space. In 1992     |
| 27       | I moved our business out of my home and into a commercial rental property at 6184 Federal       |
| 28       | Blvd, which I currently maintain for my business.   |
|          | -9-<br>SUPPORTING DECLARATION   |
|          |   |

27. In 1996 I first became aware of Dennis Peron as he was getting attention as one of the original co-authors of Prop 215, which, with its passage, had made cannabis legal in CA for treating certain medical conditions. While at the time I was uncertain as to how effective cannabis might be in the treatment of my seizures, I did appreciate that it was now being recognized as a possible alternative option to the prescription drugs I was taking. I resolved to follow the research that developed relative to the genetics and dosing levels that could be relied on to help combat these seizures.

28. In 1997, the owner of the property at 6176 Federal Blvd contacted me and asked if I would be interested in acquiring his property, which is adjacent to mine, at 6184 Federal Blvd, if the terms were favorable. This was a deal that worked for both of us and I purchased the 6176 Federal Blvd property in my name.

29. In 2000 I expanded my license to include a General Contracting classification and was issued CA Contractors license number 757758. Since the new license allowed us to do work beyond just electrical, I renamed the company Fleet Services and proceeded to operate under that license until 11/30/2012 when I decided I would cease contracting and devote my full attention to my efforts in energy efficient horticultural lighting and controls.

30. In 2002 I started Fleet Systems as a compliment to my Fleet Services contracting business. Fleet Systems provided emergency and backup power generation for both permanent and rental power applications. Fleet Systems became dealers and authorized service centers for many major brands including Kohler, Baldor, and Cummins. Within 4 years of our startup; our Fleet Systems Maintenance Contracts Division had acquired a majority of the major key accounts such as hospitals, casinos, office buildings, and hotels in San Diego whereby the annual generator service contracts were an integral part of our portfolio. Recognizing this, the local Kohler Distributor, Bay City Electric Works, made an offer to purchase Fleet Systems and I accepted their offer. It was agreed that we would -10-

| 1        | retain the Fleet Systems name so that we could continue to provide mobile power systems         |
|----------|---|
| 2        | service on news vans, semi-trucks and RV systems, services that we still provide.               |
| 3        | 31. In 2005 I expanded our generator equipment business into Mexico with the opening of Fleet   |
| 4        | Systems de Mexico. This was good timing for us because at the time we opened our facility       |
| 5        | in Ensenada, MX there were sizeable rentals and sales contracts available. In addition,         |
| 6        | many of our US manufacturers whose power systems we were already servicing had                  |
| 7<br>8   | maquiladora operations in this region which made it relatively easy to support them with        |
| · 9      | equipment and personnel from our San Diego facility. With the sale of Fleet Systems in          |
| 10       | 2007 we ceased operations in Mexico.  |
| 11       | 32. In 2010 I started Inda-Gro as an induction plant lighting manufacturer. Inda-Gro was one of |
| 12       | the very first companies to identify induction lighting as a viable, energy-efficient plant     |
| 13       | lighting technology that could compete with the existing HID lighting technology that           |
| 14       | dominated the plant lighting market.  |
| 15<br>16 | 33. It is through the ongoing research I have done at Inda-Gro that we have seen significant    |
| 10       | developments in plant photobiology with self-published and other researchers' papers.           |
| 18       | 34. From 2010 onward I worked primarily on the manufacturing and distribution side of Inda-     |
| 19       | Gro lights. Since our products relied on a well-established Tesla Coil technology which was     |
| 20       | being applied in a new way to provide lighting for plants, it required that growers be          |
| 21       | convinced that our products could deliver the crop quality and yields to which they had         |
| 22       | become accustomed under HID lighting systems. The only way that was going to happen             |
| 23<br>24 | with a new technology was if we had "partner growers" who would provide meaningful data         |
| 24       | as to their comparative results or if we had our own farm running continuously that would       |
| 26       | allow for people to see the plants and lighting systems in operation. Couple those visits with  |
| 27       | time/date stamped images posted on Facebook of previous grows and crop results and the          |
| 28       |   |
|          | -11-  |

SUPPORTING DECLARATION

consumer now has the ability to make an informed decision as to what Inda-Gro brings to 1 the market. 2 3 35. My experiences with having "partner growers" providing me with any reliable, meaningful 4 data was a challenge. More often than not, they would take one of my lights with the 5 promise that they would tell me how it performed. The majority of the time I would get 6 little to nothing back in return. Clearly this did not work for me and my plans to improve 7 our products by tracking real time plant performance values. 8 36. In 2011 I decided to no longer rely on "partner growers" as the design developments 9 required more reliable feedback in a timely fashion and I began to focus entirely on our 10 11 inhouse T&D garden operations for indoor and greenhouse lighting applications. It was at 12 this time I started both Youtube and Facebook channels to publish our work with time/date 13 stamped images and videos. 14 37. In 2012, in addition to the lighting and controls research and development underway, I was 15 given the opportunity to procure several different genetics of cannabis that I wanted to grow 16 for the treatment of my seizures. It was during this time that I became very interested in 17 18 combining the engineering work we were doing with our Inda-Gro products with the plant 19 sciences to generate organically grown cannabis products that would not only be healthier 20 but, by combining certain genetics, prove to be better at combating my seizure disorder. 21 38. Aquaponics is not widely used in cannabis cultivation. However, I was attracted to this 22 method of cultivation because of the organic nature under which the plants had to be 23 grown. Nothing could be placed on the plants that could harm the fish. This appealed to me 24 since, if I were to continue to use cannabis in combination with prescription drugs to treat 25 26 my seizures, I wanted to be sure that the cannabis I consumed was free of any potentially 27 toxic elements. A balanced aquaponic system relies on healthy fish and their waste being 28

- 12 -SUPPORTING DECLARATION

| 1        | the primary nutrients for the plants. This is a presentation I developed that goes into detail  |
|----------|---|
| 2        | as to how this method of cultivation may be employed for cannabis crop cultivation.             |
| 3        | 39. I experimented with several methods that would allow aquaponics to be used in cannabis      |
| 4        | cultivation and found a reliable technique that gave the cannabis plants their main nutrient    |
| 5        | requirements from the flood and drain fish water but which also allowed us to top feed the      |
| 6        | trace minerals that cannabis and other flowering plants need in a top water feed that does not  |
| 7<br>8   | water to the point that water combines with the fish water. This practice is referred to as     |
| 9        | decoupled or dual root zone feeding for the plants.   |
| 10       | 40. As a result of my posting this work on Facebook media I eventually came to the attention of |
| 11       | Pentair Aquaponic Eco-Systems. PentairAES is the largest manufacturer of aquaculture            |
| 12       | products in the world. It was Dr. Huy Tran, PhD, the Director of Research for Pentair at the    |
| 13       | time, who reached out to me to learn more about us and our products and to explore if           |
| 14<br>15 | induction grow lights would be a good fit for the industry and their product line. After        |
| 15<br>16 | discussing the science involved in our products and learning more about us, Dr. Tran            |
| 10       | decided to recommend our induction lights be used in the Pentair product line under their       |
| 18       | own label. His recommendations were accepted by management and I began filling                  |
| 19       | induction grow light orders for PentairAES.   |
| 20       | 41. After entering into that agreement with PentairAES, I expanded sales of our induction grow  |
| 21       | lights but I also benefited from the incredible insight and knowledge that Dr. Tran and other   |
| 22       | advanced academics within Pentair, such as Dr. Jason Danaher, have been able to provide         |
| 23<br>24 | me with in regard to how aquaponics can grow a wide range of crops in a wide range of           |
| 25       | environments while using 5-10% of the water that a traditional soil crop would consume. I       |
| 26       | also was pleased to discover from the research we were doing into plant lighting and            |
| 27       | aquaculture that the benefits we found in organically grown food crops quality extended to      |
| 28       | cannabis crop quality.  |
|          | - 13 -  |

SUPPORTING DECLARATION

42. Cannabis that I had been acquiring through local retail cannabis dispensaries would not always be guaranteed to be free of contaminant pesticides, fungicides, aerocides or even nutrients. When I would procure concentrates of the same genetics for my condition, the percentage of residual solvent elements would be increased by 10-20X what it would have been in flower form. While I want the benefits of medical grade cannabis to combat my seizure disorder, I refuse to take in chemicals that I know to be unhealthy and even life threatening.

43. In March 2015 I found a commercial property available for rent in the Barrio Logan section of San Diego. The landlord understood that I was to rent this property for the purposes of developing what I began referring to as a 151 Farm. The concept, which originally began with our R&D work on Federal Blvd, was that urban farms would grow 1 pound of cannabis to 5 pounds of food for 1 community. I went forward with the Barrio Logan project because it afforded us a larger footprint than I had available at the Federal Blvd property. The size of this property allowed us to have indoor, greenhouse and outdoor plants that were grown in a soilless aquaponic system of recirculating water. In our trials of systems and procedures I grew lettuce, hops, peppers and medical cannabis. I maintained our progress on social media with time/date stamped photos and welcomed those who had an interest in our work to visit us for tours.

44. While I initially sought out others in the hydroponics industry to co-develop the 151 Barrio
Logan project, it became apparent that, even though they may have endorsed the efforts,
they were never willing to contribute any time or money to see that the project was
maintained. While I consider Barrio Logan a success, ultimately the work and money
involved to maintain it became too much to bear and I had to shut it down and return those
operations to the 6176 Federal Blvd location where it continues to operate to this day.

- 14 -SUPPORTING DECLARATION

| 1        | 45. Over the years I became increasingly aware of all the research being done in other countries  |
|----------|---|
| 2        | on the medical benefits of cannabis. I watched with great interest as medical doctors and         |
| 3        | scientists from every realm of the sciences collaborated in finding out more about this plant     |
| 4        | and how it interacts with our endocannabinoid systems. What this ongoing research has             |
| 5        | shown is that at the botanical level there are mysteries about this plant and its broad           |
| 6        | phenotype expressions that exist amongst the wide-ranging genetics that will combine to           |
| 7        | promote homeostasis or a balancing of the mind/body relationship.                                 |
| 8<br>9   | 46. Other elements of the plant have been clinically proven to reduce blood flow to cancer cells. |
| 10       | Today there exists greater empirical evidence than ever before as to how this plant can           |
| 11       | benefit us and why its cultivation and access need to be sensibly managed. Based on my            |
| 12       | personal experiences, that of those I've seen benefit from this plant and the research that       |
| 13       | supports its medical use, I will remain committed to lending my voice to see that laws and        |
| 14       | policies are in place at the federal level which would include the re/declassification of         |
| 15       | cannabis and that at the local and state levels those who need access to this plant for their     |
| 16<br>17 | medical conditions are able to do so.   |
| 18       | 47. In late 2015 I was contacted by researchers at the National Algae Association who had seen    |
| 19       | my work whereby I had taken one of our induction grow lamps and designed a waterproof             |
| 20       | housing that allowed the lamp to be put underwater without any type of housing over               |
| 21       | it. This put the lamp's energy, intensity and spectrums at depths in the tank where it is         |
| 22       | difficult for light to travel at distance to meet with the macroalgae being grown.                |
| 23       | 48. The particular algae we were interested in cultivating with our lamps was the                 |
| 24       | Haematococcus Pluvialis algae or "HP" for short. HP is known to be very high in the super         |
| 25<br>26 | antioxidant astaxanthin. Research indicated that by installing the lamps in the tank we           |
| 20       | would be able to increase the concentration levels of astaxanthin and decrease times to           |
| 28       |   |
|          | - 15 -  |
|          | SUPPORTING DECLARATION  |
| I        | N   |

| 1        | harvest. From my perspective, anything I could do to help improve any crop production             |
|----------|---|
| 2        | value which, when extracted, would benefit the patient, was worthy of pursuit.                    |
| 3        | 49. Because of my work on the AquaPAR submersible induction lamps to decrease times to            |
| 4        | harvest and increase HP concentration levels, I was invited to give a presentation at The         |
| 5        | National Algae Convention.  |
| 6        | 50. One of my greatest personal motivations in starting my own 151 Farms Urban Aquaponics         |
| 7<br>8   | Gardens was that I could gain personal knowledge by creating these gardens and learn what         |
| 9        | would and would not work when growing a wide variety of food and plant-based medicines            |
| 10       | in this fashion as well as develop our lighting and control products.                             |
| 11       | 51. The reason this work at this particular time was especially appealing to me is that botanical |
| 12       | plant substances can help alleviate certain medical conditions in patients when combined          |
| 13       | with the ability to optimize crop production values in a given area using controlled              |
| 14       | environmental conditions whereby the plants can develop in the lowest times to harvest            |
| 15<br>16 | across all plant species.   |
| 17       | 52. When optimizing plant production values, what matters most is that the research supports      |
| 18       | whatever the benefits to the patients may be based on control factors such as the plant           |
| 19       | genetics, the type of cultivation systems and procedures being used that allows for               |
| 20       | organically grown plant-based products to be grown in a repeatable fashion. It is for this        |
| 21       | reason I began to introduce a wider variety of crops, known for treating medical conditions,      |
| 22       | into our 151 Farms so they could be available to those who would seek them out in their           |
| 23<br>24 | fresh unadulterated form from their local garden. Other factors that contributed to my            |
| 24       | support for and development of 151 Farms included; The ability to co-cultivate fish and           |
| 26       | plants in a soilless urban garden setting.  |
| 27       |   |
| 28       |   |
|          | - 16 -  |

!

I

SUPPORTING DECLARATION

53. There is an opiate epidemic in the United States which has now reached epic proportions. The need for fresh, organically grown, unprocessed foods and plant-based medicine has never been greater.

54. A whole host of medical conditions, such as high blood pressure, diabetes, Alzheimer's, obesity, and cancer, can be directly attributed to the consumption of processed foods.

55. The availability of fresh unprocessed foods is severely restricted in urban settings. This leads more people to purchase food products that have longer shelf lives from the stores in their neighborhoods. Consequently, the percentage of diet-related diseases is disproportionately higher in regions where access to unprocessed food is limited. 56. Why is having locally-sourced, organically grown medical cannabis plant genetics so important to patients? Research has shown improved efficacy from the EXTRACTION of essential oils from cannabis plants when that extraction is done from a just harvested plant. This extraction process is referred to as a live resin extraction. A cultivation process whereby the just harvested plant can be converted into that essential oil is critical to the finished product quality. What is equally important is that the plants are grown in a controlled environment whereby the full phenotype expression can occur. This is a function of broad spectrum lighting. It's also important that the plant genetics are known and stable to realize these benefits in a repeatable process. Finally, it is important that the plants have not been subject to pesticides, aerocides, fungicides or residual nutrients that may contain heavy metals or plant growth regulators which in an extracted process could be 10-20X what those levels would be in a flower form. Cannabis grown and processed in this way allows the patient to take lower doses that, when coupled with diet and some form of exercise incorporated into a daily regimen, help to, at a minimum, improve their quality of life and reduce or even eliminate the medical conditions that existed prior to their introduction to naturopathic treatments. The benefits of a 151 Farm are that the source plant material for - 17 -SUPPORTING DECLARATION

| 1        | medical grade cannabis can be made available to those within the community nearest to   |
|----------|---|
| 2        | where it has been grown.  |
| 3        | 57. If you're familiar with the term Community Supported Agriculture (CSA), a 151 Farm  |
| 4        | utilizes Cannabis Supported Community Agriculture (CSCA) as a way to pay it forward   |
| 5        | within our communities by providing housing and jobs for all skill levels and donating a  |
| 6        | portion of the food being grown to local food banks.  |
| 7        | 58. The negative impact that our drug laws and policies have had in non-white communities has                                     |
| 8<br>9   | been disproportionately larger than for those who live in predominantly white   |
| 10       | communities. These drug policies have led to higher percentages of incarceration, lost jobs,                                      |
| 11       | crime and other negative effects for those individuals and their communities.   |
| 12       | 59. With the increased opportunities coming from the mainstream and legalization of cannabis                                      |
| 13       | within these communities, it is morally imperative that under these new laws, cannabis  |
| 14       | related business opportunities be given to those who have been most affected by those   |
| 15       | previous drug policies and laws. 151 Farms provides a distinct and transparent pathway for  |
| 16       | those opportunities.  |
| 17       | 60. It is necessary to meet with government officials and interact with them on a regular basis to                                |
| 18<br>19 |   |
| 20       | see that organic urban farming and medical cannabis patient's needs are being considered.   |
| 21       | Letting your voice be heard, not being passive, leading by example, and being part of the   |
| 22       | dialogue to be part of the solution are all parts of what being a 151 Farmer means when it  |
| 23       | comes to exacting change in an ever-changing industry.  |
| 24       | 61. For me personally, knowing that I am able to grow my own medical grade cannabis with  |
| 25       | particular genetics that help to prevent my seizures is comforting, but I would also like to                                      |
| 26       | know that I can purchase medical grade cannabis which is free of toxic elements, should I   |
| 27       | become unable to grow in the future. This got me looking into how the State of CA   |
| 28       | regulates pesticides and toxicity limits on medical cannabis products that are cultivated and<br>- 18 -<br>SUPPORTING DECLARATION |

| 1        |  |
|----------|--|
| 1        | produced under the authority of Prop 215. What I found is that as far as the State of CA is    |
| 2        | concerned, since 1996, when Prop 215 was passed, there have never been any limits on           |
| 3        | pesticides and toxicity because the California Department of Pesticide Regulations (CDPR)      |
| 4        | got their limits from those established by the FDA and EPA. The problem CDPR had with          |
| 5        | setting state levels was that it relied on a federal agency to provide data and NO federal     |
| 6        | agencies will perform the pesticide and toxicity studies on a product that is listed as a      |
| 7<br>8   | Schedule One drug. Under the Controlled Substance Act cannabis is seen as having NO            |
| 8<br>9   | medicinal value whatsoever, it is subject to severe safety measures and it is listed as having |
| 10       | a higher potential for abuse than heroin, which is listed as a less dangerous, schedule two    |
| 11       | drug.  |
| 12       | 62. With one side blaming the other and me as the medical cannabis patient caught in the       |
| 13       | middle, I began researching why the federal government still considered cannabis as having     |
| 14       | NO medicinal value. What I found that seriously contradicted that position was that in 2003    |
| 15<br>16 | the Department of Health and Human Services was granted patent number US 6,630,507 B1          |
| 10       | which cites the antioxidant and neuroprotective benefits of cannabinoids which are to be       |
| 18       | derived from cannabis.   |
| 19       | 63. If, after reviewing this patent, there is still any doubt in your mind as to what research |
| 20       | supports it and the benefits of cannabis, I would encourage you to look at the 'other          |
| 21       | publications' as listed in the upper right-hand portion of the patent. Here you will see the   |
| 22       | studies from accredited scientists and institutions that from 1965 to 1981 have done their     |
| 23<br>24 | own research to support this singular patent issued in 2003 and the benefits that this plant   |
| 24<br>25 | represents to the medical patient. Yet today, 15 years later, cannabis remains a Schedule      |
| 26       | One drug. The federal government's scheduling hypocrisy regarding cannabis as having NO        |
| 27       | medicinal value is astounding!   |
| 28       |  |
|          |  |

 $\|$ 

SUPPORTING DECLARATION

64. As a medical cannabis patient myself and having lived for 2 years in the Stone House whereI saw firsthand the ravages of heroin, I simply cannot understand the hypocrisy betweenthese two positions. It is one of the reasons I have been so vocal about trying to enactcommon sense laws and regulations as to how cannabis is grown and how it can be accessedby those who require it medically.

65. Another area of great concern to me is why any state government would not have established pesticide and toxicity levels of substances that may come in contact with cannabis before they allow the sale of cannabis products within that state. For food and drugs other than cannabis, these levels are typically established by the federal government but since cannabis is listed as a federal schedule one substance, the California Department of Pesticide Regulation, which would normally set these limits, has had a hands-off policy for setting these limits, citing lack of federal direction.

66. With the passing of Prop 215 in 1996, California has had 20 years to set pesticide and toxicity limits on cannabis grown in state and never provided those limits to the cultivators or to the medical cannabis patients. It was left up to the consumer to decide if they were comfortable with the amount of heavy metals and other potentially toxic substances that could be found in the plant materials and if they were willing to consume that product. Even though it is necessary that there be established limits that require that the testing of that product and the information regarding what was in that product be made available to the consumer, more often than not those test results were not available, and the medical cannabis patient was left to chance what was in the plant material they were ingesting. With recent tests showing that over 84% of the cannabis being tested has tested positive for what are considered harmful levels of pesticides, the fact that the State of CA has left this responsibility to the medical cannabis patient consumer for the last 20 years is unconscionable.

- 20 -SUPPORTING DECLARATION 67. With the passing of Proposition 64, "The Control, Regulate and Tax the Adult Use of Marijuana Act" (AUMA) the state has now accepted their responsibility to set these limits. However, the limits have not yet been set and are expected to be released at some point in the near future.

68. With the passing of AUMA nothing has changed in the federal scheduling of cannabis. It's still Schedule One. Why has the state agreed to establish these guidelines now when they were unwilling or unable to set them in protection of the medical cannabis patient before the passage of AUMA? It's simple. The state never took their responsibilities to the medical cannabis patient seriously under Prop 215 since it did not increase revenue for them.

69. I felt strongly then and still feel today that, while Prop 215 was certainly not perfect, it could have been improved upon if the legislature had seen fit to do so. The legislature failed the medical cannabis patient and now they are in charge of a regulatory system that is supposed to be responsible and equitable to the medical and so called "recreational" cannabis communities. To say I have my doubts as to how they will manage this on behalf of the medical cannabis patient would be, to put it mildly, a massive understatement.
70. I have always had a hard time accepting, and have staunchly opposed, any laws or regulations that purport that cannabis can be structured for "recreational" use. It is my belief that has been proven to be the case in Washington, Oregon and Colorado that when "recreational" laws are introduced the medical cannabis patient's rights are infringed upon

as the non-profit medical cannabis industry virtually disappears while everyone chases the for-profit "recreational" market.

71. When these so called "recreational" laws are passed they attempt to equate cannabis to other "recreational" drugs such as alcohol or tobacco. Because of that, I stand opposed to a recreational classification for cannabis since both alcohol and tobacco have proven to be cancer causing, lead to addiction and cause death. Cannabis, in any of its forms, has none of -21 -

SUPPORTING DECLARATION

| . 1      | these deleterious effects. As cited in the DEA 2017 Drugs of Abuse (page 75) there has                |
|----------|---|
| 2        | never been a reported case where someone has died or suffered permanent harm from the                 |
| 3        | effects of cannabis. The same cannot be said of alcohol or tobacco.                                   |
| 4        | 72. In or around March of 2016 I became aware that an initiative, Proposition 64, The Control,        |
| 5        | Regulate and Tax the Adult Use of Marijuana Act (AUMA) had made the California 2016                   |
| 6        | ballot. With the passage of AUMA, cannabis would be made available in CA in a                         |
| 7        | "recreational" form to anyone over the age of 21 who wishes to purchase it without the need           |
| 8        | of a physician's recommendation.  |
| 9<br>10  | 73. Over the course of the next couple of months I read this initiative and considered what it's      |
| 10       | passing would mean for the cannabis market in general and the medical cannabis patient in             |
| 12       |   |
| 13       | particular. I regularly watched and participated in online debates on the merits of AUMA              |
| 14       | and found my position to oppose the passing of AUMA only being reinforced as I learned                |
| 15       | more about how the general public saw AUMA in a positive light without having an in                   |
| 16       | depth understanding of what its passage would mean to those who would be most impacted                |
| 17       | by it: medical cannabis patients.   |
| 18       | 74. Since AUMA was a long and complex initiative, one that the average reader found to be             |
| 19       | confusing and difficult to read through in its entirety, I took the initiative to create a            |
| 20       | condensed version that included a Table of Contents, a link to the Proposition in its original        |
| 21       | form and comments that invited discussion as to the purposes that were specifically included          |
| 22<br>23 | in the Proposition. I then posted that AUMA analysis on the 151 Farmers website, which                |
| 24       | was created to explain our ideologies and act as an archive for the papers and research that          |
| 25       | help propel forward the need for urban gardens and how cannabis and those laws that affect            |
| 26       | cannabis are an important element in those farms' success.  |
| 27       | 75. From that AUMA analysis I began a campaign that included interviews and numerous social           |
| 28       | media posts on behalf of myself and others and conducted seminars as to what the passing of<br>- 22 - |
|          | SUPPORTING DECLARATION  |

----

÷

.

AUMA would mean to the medical cannabis patient. Within these presentations and posts I would always reference the AUMA analysis and a certain section of the initiative that was to be voted on.

76. I used social media and the AUMA analysis to create not only discussions about the specific elements within AUMA but also what organizations endorsed it and why they chose to do so. One organization that supported the passing of AUMA was the California Medical Association (CMA). With its 41,000 physician members, the CMA has never supported cannabis for any medical purposes, but they were endorsing AUMA for "recreational" purposes. I found that position to be hypocritical by pointing out the following: 1) The CMA never endorsed cannabis for its possible benefits as a drug to be used for certain medical conditions; 2) The CMA has never been on record supporting research on how cannabis could be used to treat certain medical conditions; 3) Has the CMA endorsed laws that make other recreational drugs legally available to those over 21 years of age? Of course not. I believe that the CMA and other likeminded organizations will endorse any cannabis law that minimizes the benefits of cannabis for medical use and which allows the states to construct laws that tax and regulate cannabis in a recreational form so that it does not compete with pharmaceutical drugs.

77. Once I had a better understanding of AUMA I felt compelled to reach as wide an audience as possible to express my concerns. While I was already reaching a fairly large audience with my posts, seminars and press conferences, it was somewhat limited to a core group who already followed me. If I wanted to reach a much larger audience I needed to get the support of those who had a much larger following. I did that with a campaign that included radio, tv, press conferences, seminars and an outreach to cannabis activists who had their own followings.

| 1        | 78. In September 2016 I reached out to Dennis Peron to introduce myself. Over the course of      |
|----------|--|
| 2        | various phone and text messages we shared our concerns over what the passage of AUMA             |
| 3        | may mean to the medical cannabis patients' rights which were granted to them under Prop          |
| 4        | 215.   |
| 5        | 79. Dennis and I both agreed that should AUMA pass, those medical cannabis patients' rights      |
| 6        | that had previously been made available to them under Prop 215 were likely to be eroded          |
| 7<br>8   | and infringed upon as we have seen happen in other states where recreational cannabis was        |
| °<br>9   | added to what had previously been strictly medical cannabis. Dennis and I agreed to              |
| 10       | collaborate to the extent we would try to educate the voters as to what the details within       |
| 11       | AUMA would mean to the medical cannabis patient should it pass.                                  |
| 12       | 80. In October 2016, Dennis Peron, with the help of friends, was able to travel from his home in |
| 13       | San Francisco and visit our 151 Farm here in San Diego. While Dennis was here we invited         |
| 14       | other activists to visit our farm and meet him to discuss how we all might help in his efforts   |
| 15<br>16 | to protect the patients' rights that had been granted under Prop 215.                            |
| 10       | 81. During that visit, Dennis gave me access to his personal Facebook page where I began         |
| 18       | presenting elements of AUMA on his behalf, daily or every other day, that came directly          |
| 19       | from the Prop 64 language. Those posts ended up creating a lot of debate and discussion          |
| 20       | among those who followed Dennis's page. At the time we could only hope they would                |
| 21       | seriously consider what they would be getting if AUMA passed.                                    |
| 22       | 82. Also during that visit, Dennis and I were invited to be interviewed for a radio show on our  |
| 23       | mutually declared positions as to the threats that the passing of AUMA would represent to        |
| 24<br>25 | the medical cannabis patients' rights granted under Prop 215. We agreed and those                |
| 25       | interviews were done in Irvine, CA and sponsored by WeedMaps for SpeakEasy radio.                |
| 27       | 83. In addition to my work on social media, I also kept up the 151 Farms website which is        |
| 28       | where I created a paper, in collaboration with Dennis Peron and other likeminded activists,      |
|          | - 24 -<br>SUPPORTING DECLARATION   |
|          |  |

· :

that addressed how, with the passing of AUMA, the medical cannabis patients' rights which had been granted under Prop 215, would most likely be lost. With the posting of this paper just prior to the November 8, 2016 elections, we stated why cannabis could never be considered "recreational" and it was subsequently released to a wide audience through numerous social media platforms.

84. In November 2016 California voters approved Proposition 64, the Adult Use of Marijuana Act, as a way to make cannabis available to anyone over the age of 21 for recreational purposes. Under AUMA, the state will incorporate the medical cannabis patients' rights and access to medical grade cannabis within a regulatory structure that will "streamline" (their words) recreational and medical cannabis licensing beginning January 1, 2018.

85. Under AUMA the state has been given the right to modify the original voter approved proposition with a <sup>3</sup>/<sub>3</sub> majority vote of the house. This is the first time that a voter approved initiative has given the state the right to change it without another initiative to replace it. I find this to be a slippery-slope whereby, for example, the <sup>2</sup>/<sub>3</sub> majority might someday just vote that a simple majority can carry a change in the law. I seriously doubt the constitutionality of any initiative that undermines this most basic tenet of voter approved Initiatives.

86. With the passing of AUMA we shall see what its effect will be on the medical cannabis patient. I stand prepared to exercise any and all of my constitutional rights in seeking protection for those medical cannabis patients, cultivators and processors who have been harmed should AUMA not take into account their unique needs and circumstances. From a medical cannabis patient's perspective these are the questions I feel need to be asked: 1) Will the passing of AUMA have a negative impact on patients' rights to cannabis?; 2) Will it affect the availability of medical grade cannabis?; 3) Will the price of cannabis go up to where it is now unaffordable for the medical cannabis patient?; 4)Will the opportunities to -25 - SUPPORTING DECLARATION

| 1        | continue research and development of cannabis genetics for specific medical conditions be         |
|----------|---|
| 2        | limited to only those who would qualify under a for-profit regulatory framework controlled        |
| 3        | by a state government that has historically taken a laissez-faire attitude toward cannabis and    |
| 4        | its use for medical purposes?   |
| 5        | 87. Under AUMA, has the state given voice to a medical cannabis association that can speak on     |
| 6        | behalf of those who are representative of that group of cannabis buyers that is distinctly        |
| 7        | different from those that would purchase for recreational reasons? If so, who are they?           |
| 9        | 88. Since 2015, the 151 Farms at 6176 Federal Blvd has had many people from very diverse          |
| 10       | backgrounds come tour our operations. I have always treated these visitors as Friends of the      |
| 11       | Farm and hope to inspire them once they have seen what we represent.                              |
| 12       | 89. If a Friend of the Farm is interested in visiting us on more than one occasion, they become a |
| 13       | 151 Ambassador. That is, they can lead their own tour groups and help spread the word             |
| 14       | about what we do here. These relationships have spawned some remarkable personal                  |
| 15       | connections that have continued to bring attention to our cause.                                  |
| 16<br>17 | 90. The list of 151 Ambassadors has grown. Over the years we have welcomed a large and            |
| 18       | diverse range of people to our farm who have come from all over the world. Our motto is:          |
| 19       | We Need More Gardens Not Less. Come Visit Us! Leave your Bias at the Gate and I                   |
| 20       | Promise You Will Learn Something!   |
| 21       | 91. With that message we have seen politicians, members of the media, medical doctors,            |
| 22       | researchers, judges, lawyers, entrepreneurs, veterans, law enforcement, activists, teachers,      |
| 23<br>24 | students, policy makers, community leaders and more. It seems that people identify with           |
| 24       | community and appreciate a place where they can come together and feel like they can              |
| 26       | contribute and make a difference. If they have something tangible to wrap their heads             |
| - 27     | around that includes a roadmap that allows them to recreate what they've seen, the                |
| 28       | possibilities are endless. At 151 Farms that has been my goal and it all starts with a plant.     |
|          | SUPPORTING DECLARATION  |

- -

92. We have had such a huge diversity of talented and motivated people come visit our farm and 1 go on to become 151 Ambassadors that there are simply too many to list. Here are 3 2 3 noteworthy 151 Ambassadors that, due to their dedication and commitment, I would like to 4 present as representatives of our cause: 5 a. Coach Don Casey, former NBA Coach and currently serving as the National 6 Trustee Board Member for the ALS Foundation. Coach Casey has been 7 instrumental in seeing that ALS patients who seek medical cannabis 8 understand that many doctors support the use of cannabis as a way to 9 improve their quality of life. I developed The Casey Cut in honor of Coach 10 11 Casey as a tribute to his many years of work on behalf of ALS patients. 12 b. Ms. Linda Davis, Americans for Safe Access, in her tireless efforts to bring 13 medical cannabis patients the 151 Farms message of how important it is to 14 have organically grown, pesticide free cannabis to treat their medical 15 conditions. 16 c. Sgt. Sean Major, former Marine Corps servicemember, who came to 151 17 Farms as the only active duty military member in the entire Department of 18 19 Defense who has ever been given the authorization to treat combat related 20 brain injuries by cultivating cannabis. Having grown cannabis prior to 21 enlisting in the Marine Corps, Sean believed that the psychological issues he 22 was having as a result of his tours in Afghanistan could be managed if he 23 were allowed to cultivate cannabis while gaining accreditation from a school 24 that taught cannabis cultivation as a post military career opportunity. Sean 25 has continued to work tirelessly on behalf of veterans who suffer from 26 27 combat related injuries so that they might have access to medical grade 28 cannabis to treat their conditions. - 27 -SUPPORTING DECLARATION

| 1        | 93. In July 2015, Mr. Ramiz Audish came to our offices at Inda-Gro and asked if he could take a   |
|----------|---|
| 2        | tour of our farm. Ramiz, who preferred to be called Ray, was a well-spoken, clean cut             |
| 3        | young man who had heard about what we were doing and wanted to see the operations for             |
| 4        | himself. Ray was quite complimentary of everything we were doing with both Inda-Gro and           |
| 5        | 151 Farms and suggested some ideas to improve our operations. I was interested in hearing         |
| 6        | what he had to say.   |
| 7<br>8   | 94. Ray first asked under what authority I was growing the cannabis on our site. I pointed him    |
| °<br>9   | to the Physician's Recommendations I had posted for those personal medical cannabis needs         |
| 10       | as established under Proposition 215 and SB 420 guidelines.                                       |
| 11       | 95. I told Ray that in addition to the posted Physician's Recommendations, we had recently        |
| 12       | completed a cannabis cultivation application with the Outliers Collective, a duly licensed        |
| 13       | collective located in El Cajon, CA. In that process the owners of Outliers and two Sheriff's      |
| 14       | Deputies who specialize in cannabis compliance came out to our farm. I gave them a tour of        |
| 15<br>16 | our operations and, while they complimented the quality and organic nature of our cannabis,       |
| 10       | they told us they could not certify us as an approved vendor for Outliers since the City of       |
| 18       | San Diego would not grant a license for cannabis plant counts that would allow us to grow         |
| 19       | commercially at our location. With that, we were denied approved vendor status with               |
| 20       | Outliers Collective. Both Outliers and I were very disappointed, but I did feel better when,      |
| 21       | after having toured our facility, the Sheriff's Deputies told me that I was operating within      |
| 22       | Prop 215 and SB 420 guidelines.   |
| 23       | 96. Confident that I was meeting the letter of the law as a cannabis cultivator, Ray said that he |
| 24<br>25 | felt the only other thing I lacked was a medical marijuana consumer collective (MMCC) or          |
| 26       | retail dispensary at this location. Ray told me that he had experience in owning and running      |
| 27       | these MMCC businesses. I did not have an understanding of the retail MMCC laws in San             |
| 28       | Diego, but Ray told me he was well versed in these laws. Ray explained to me that our             |
|          | - 28 -<br>SUPPORTING DECLARATION  |
|          |   |

| 1        | location was appealing to him because it was unique in that City of San Diego zoning           |
|----------|--|
| 2        | allowed for an MMCC type of business at this location. I told him that my interests in the     |
| 3        | property were not in running an MMCC business but were in lighting and the development         |
| 4        | and expansion of our 151 Farms.  |
| 5        | 97. Ray was undeterred by my resistance and insisted that he would be entirely responsible for |
| 6        | the MMCC business and would acquire the licensing and permits necessary to maintain            |
| 7<br>8   | compliance for it. His pitch was that the dispensary would bring more attention to what I      |
| °<br>9   | was doing at 151 Farms and that by working together we would present to the community a        |
| 10       | sustainable, organically grown "Seed to Sale" model of what our 151 Farm                       |
| 11       | represented. That concept appealed to me and with that I considered his offer under the        |
| 12       | following conditions:  |
| 13       | a. I would first visit one of his other MMCC businesses to see for myself how it was           |
| 14       | being run. The business he took me to was in Mira Mesa and I was impressed with                |
| 15<br>16 | how well it was built out and how well it appeared to be run.                                  |
| 10       | b. Ray's and my businesses would be clearly divided with separate entrances and                |
| 18       | addresses.   |
| 19       | c. I would have nothing to do with his business because, unlike Ray, who had operated          |
| 20       | retail cannabis dispensaries, I knew nothing of what it took to be licensed and                |
| 21       | compliant for this type of business.   |
| 22       | d. Ray assured me that his intentions were to become a long-term tenant and that he            |
| 23       | would prove his value by not interfering with my current business operations and by            |
| 24<br>25 | signing a short term, 6-month lease while he went about acquiring the necessary                |
| 26       | licensing and permits to operate his business.   |
| 27       | e. Ray agreed to these terms and the Lease Agreement was executed on July 20, 2015             |
| 28       | and was set to expire on December 20, 2015.  |
|          | - 29 -<br>SUPPORTING DECLARATION   |
|          |  |

| 1        | 98. With our Agreement in place, Ray began operating his MMCC business, which he called       |
|----------|---|
| 2        | Pure Meds. The following statements reference my observations and opinions of Ray and         |
| 3        | the business from July 2015 until February 2016:  |
| 4        | a. Ray was a good tenant who paid his rent on time and never presented any problems           |
| 5        | for me as a landlord.   |
| 6        | b. Ray was at the property daily and ran what appeared to me to be a transparent,             |
| 7        | successful and well managed business.   |
| 8        | c. Ray had licensed and armed security with controlled access and paid attention to the       |
| 10       | details that I initially feared would detract from my Inda-Gro and 151 Farms                  |
| 11       | business. The concerns I had were that the retail business would attract people who           |
| 12       | would hang around outside the business or attract criminal elements. That never               |
| 13       | happened. In fact, just the opposite occurred. Pure Meds attracted repeatable local           |
| 14       | customers who appreciated that they could acquire their medical grade cannabis                |
| 15       | products without traveling great distances or having to deal with an underground              |
| 16<br>17 | resource.   |
| 18       | d. The operation of Pure Meds did in fact increase the interest in 151 Farms and our          |
| 19       | Inda-Gro lighting products.   |
| 20       | e. Prior to witnessing how Pure Meds operated, I had no firsthand knowledge of how a          |
| 21       | retail MMCC would or should operate. During the course of his 6 month lease I had             |
| 22       | a chance to form some opinions that were, for the most part, positive. While the              |
| 23       | retail side of the business still did not inspire me to get involved, I was satisfied that    |
| 24       | those who had the experience and resources necessary to manage the day to day                 |
| 25       |   |
| 26<br>27 | operations of the business would be an asset to me and my goals with 151 Farms.               |
| 28       | f. When the end of the lease came up, I asked Ray if he planned on staying and what           |
|          | the status was on his licensing with the City. He told me that it was in process and<br>-30 - |
|          | SUPPORTING DECLARATION  |

e

that he would have the license within the next 90 days. I had no reason not to believe Ray as he had been a man of his word in everything he had promised me before. In addition, I, as a landlord, did not see myself as some sort of traffic cop who was expected to make sure Ray paid all his taxes and operated in accordance with all the laws and regulations that his type of business required. If Ray did not secure the necessary operating permits I knew that the City would not allow him to operate and would shut down his business. With that, I agreed to let him stay on the property on a month to month basis for 90 days, at which time, if he had the license to operate, I would give him a 1-year lease. That was satisfactory to Ray and we continued with our relationship.
99. In February 2016 I was served with a lawsuit by the City of San Diego that charged me with

running an illegal cannabis dispensary. I was very surprised to receive this lawsuit because it listed me as the owner/manager of Pure Meds and that was never the case. Had the City noticed me by letter that my tenant, Pure Meds, was not in compliance with the MMCC licensing requirements and that my property was not in an area that could ever be zoned for an MMCC Conditional Use Permit, I would have taken action and would have served Ray with an Unlawful Detainer. At the time I was served this lawsuit, Ray was no longer renting under a lease and he was certainly not in compliance with our Agreement that he operate in accordance with city rules and regulations for his business.

100. Ray was not named in that lawsuit because the City was unable to identify who the actual tenant/operator of Pure Meds was. When I showed the lawsuit to Ray, he offered to pay for my legal defense until the case was adjudicated as long as he was able to continue operations. He told me that this was not the first time he had seen this happen and that he was certain that his lawyer could get the case dismissed or obtain a negotiated settlement. He told me he would start a petition that his patients would sign asking the City -31 -

to allow Pure Meds to remain open. I accepted that offer and was prepared to see where this would go once the lawyers for both sides got together and worked out the details. In less than 30 days Ray provided me with 19 pages and some 200 signatures of patients that wanted Pure Meds to remain open. At the time I thought there might be a pretty good chance of negotiating something with the City that allowed him to stay open but of course I didn't know what would come of it since a rezoning had taken place.

101. The only way I discovered that my property had been rezoned was by my having been named in that lawsuit. Within the lawsuit it states that my property had been in an MMCC compliant zone prior to January 13, 2016 at which time the City of San Diego rezoned the property, for unknown reasons, so that it would no longer be eligible to operate as an MMCC. Prior to the rezoning neither I nor any of my neighbors that I spoke with had been noticed that this rezoning was to occur. When I requested the public information as to what notification had been given to the property owners that this rezoning was to be considered, the information I received from the city proved that there had been virtually no notice given to any of the property owners and the notices that were given talked obliquely of a general development plan that included a shopping center approximately 2 miles from our properties.

102. The City next sought a Temporary Restraining Order on me to keep me off the property. These TRO motions are usually summarily granted to the City but in my case, when I showed up to court to argue that I was NOT the owner of Pure Meds and was instead the owner of the PROPERTY and that I had just found out from the details given in that lawsuit about the rezoning issue on my PROPERTY, the Judge asked the City Attorney if that was in fact the case and the City Attorney admitted that it was. With that, the Judge asked me directly if I would be willing to cooperate with the City Attorney in identifying who the owner of Pure Meds was, to which I responded that I had no problem doing so. The -32 -SUPPORTING DECLARATION

| 1        | Judge then denied the TRO. I would have thought my agreeing to cooperate with the City          |
|----------|---|
| 2        | Attorney in this matter would have satisfied the City Attorney but she and her boss were        |
| 3        | quite upset with the denial of the TRO and argued after the decision had been made that I       |
| 4        | was a threat and that the Judge should reconsider. The Judge would not alter his decision       |
| 5        | and I was able to continue operating my business while I decided what to do next with Ray       |
| 6        | and Pure Meds.  |
| 7        | 103. With the TRO having been denied, the City asked for and received a warrant to com-         |
| 8        | onto the property and seize anything related to what they determined was illegal drug           |
| 9        | activity.   |
| 10<br>11 |   |
| 12       |   |
| 13       | and placed me and my 3 employees who were on site in handcuffs.                                 |
| 14       | 105. I never resisted and offered to open every door or cabinet that I had access to as they    |
| 15       | requested. I told them that had they requested a tour of the property, I would have given       |
| 16       | them one. I regularly conduct these tours and believed that I was operating in compliance       |
| 17       | with the laws as defined by Prop 215 and SB 64. Everything that the officers wanted to see      |
| 18       | within my areas of operational control was made available to them. I never denied that ther     |
| 19       | was cannabis being grown and processed on my property but I had the Physician's                 |
| 20       | Recommendations posted for the plants and materials on hand and believed I was operating        |
| 21       | legally within the limits set forth under these laws. With that, the officers counted and       |
| 22       | inventoried all of the items, which included company computers, that they felt they might b     |
| 23<br>24 | able to use to prosecute me should they choose to.  |
| 24       | 106. When it came to the officers gaining access into Pure Meds, I told them that I did no      |
| 26       | have a key to that area as it was sublet. When they asked me who the owner of Pure Meds         |
| 27       | was, I told them his name was Ray and I did not know his real name as I had forgotten           |
| 28       | it. The officers asked me if I could get them his real name and I told them that I could but it |
| _        | - 33 -<br>SUPPORTING DECLARATION  |

| 1        | would require me finding the lease I had with him which was on the computer they had just     |
|----------|---|
| 2        | confiscated as evidence. The officer noted that the information was available on my           |
| 3        | computer and a locksmith was called to gain access into Pure Meds.                            |
| 4        | 107. During the approximately 3 hours the officers were on site conducting their              |
| 5        | investigation, I pleaded with them not to kill the mother plants that had been hybridized and |
| 6        | genetically adapted to grow in an aquaponic system. These were high CBD (to be                |
| 7<br>8   | differentiated from the more hallucinogenic THC) strains that we were developing that were    |
| 9        | showing promise in a high nitrogen system without the need for trace mineral                  |
| 10       | supplements. It had taken us nearly 3 years to accomplish that task.                          |
| 11       | 108. Some of the officers appeared sympathetic to what I was telling them. They               |
| 12       | admitted they had never seen an aquaponics cultivation system like ours in the past. I took   |
| 13       | the time to explain to them what our purpose was and, although they still had a job to do, I  |
| 14       | could tell they were interested in what we were doing. For example, I was asked by one of     |
| 15<br>16 | the officers how these products might work for dogs that might have seizures. Another         |
| 17       | officer told me his mother had fibromyalgia and asked if an organically grown CBD product     |
| 18       | would offer her some relief. I don't fault the officers for what happened that day. I saw     |
| 19       | them on the phone trying to see if they could get permission to avoid killing the mother      |
| 20       | plants. Whoever they were talking to, though, denied that permission and the plants were      |
| 21       | all, every single one, killed and taken in for evidence. I was heartbroken. We lost some      |
| 22       | very solid genetics that day.   |
| 23<br>24 | 109. The officers eventually removed the handcuffs and left without arresting me or           |
| 25       | anyone from my company. I was told that a Pure Meds guard was briefly detained on a           |
| 26       | weapons and cocaine charge but when they found that the gun was properly registered and it    |
| 27       | was not cocaine after all, the guard was released from custody.                               |
| 28       |   |
|          | - 34 -<br>SUPPORTING DECLARATION  |
|          |   |

|          | -  |
|----------|--|
| 1        | 110. After the officers left we were all pretty shaken up but I got everyone together and      |
| 2        | told them that we had done nothing wrong and we were going to return to our normal             |
| 3        | activities as soon as possible. With that, I invited local TV stations onto the property who   |
| 4        | were congregating outside our yard watching the police action occur. I got them to set their   |
| 5        | cameras up outside of our fish tanks and I conducted interviews so I could tell listeners our  |
| 6        | side of the story. I wanted people to know what we stood for as a 151 Farm and not see us      |
| 7<br>8   | as just another one of the illegal pot shops that were springing up everywhere and getting all |
| °<br>9   | the media attention.   |
| 10       | 111. The next day I got a phone call from Ray who told me he was sorry this had                |
| 11       | happened and that he wanted to resume operations as quickly as possible. He told me these      |
| 12       | raids were common practice and the normal way things were conducted until the case went        |
| 13       | to trial. He told me that these types of businesses would typically continue to run for up to  |
| 14       | another 6 months before they were permanently shut down or a settlement was reached that       |
| 15<br>16 | allowed them to continue to operate.   |
| 10       | 112. I asked him if he had, in fact, ever made an attempt to apply for an MMCC CUP and         |
| 18       | he told me that, while he had originally intended to, he never did. I told Ray that had he     |
| 19       | done what he had originally promised by applying for the CUP, he would have had a very         |
| 20       | good chance at being awarded the CUP since the zoning allowed for it at the time he began      |
| 21       | renting from me. It was the lawsuit that was filed which first informed me that my property    |
| 22<br>23 | had been eligible for a CUP and then, for whatever reason, the property was rezoned to         |
| 23<br>24 | make it ineligible for a CUP shortly before the case against me was filed. Naturally I was     |
| 25       | very upset with what Ray had put me through and was even MORE upset that his actions           |
| 26       | had reduced the value of my property if the city having rezoned my property right after Pure   |
| 27       | Meds began business made it permanently ineligible for any future MMCC business to             |
| .28      | operate.   |
|          | - 35 -<br>SUPPORTING DECLARATION   |
|          |  |

. .

¥.

|   | 113. Since Ray had never attempted to apply for the CUP after he told me that he would, I            |
|---|--|
|   | told him that he could no longer continue to operate his business on my property. Ray was            |
|   | given one week to remove his remaining possessions from the property before I disposed of            |
|   | them. He was not happy that I wasn't going to let him reopen. He offered me considerably             |
|   | more money to which I said "no" and that my decision was final. He begrudgingly accepted             |
|   | that and the next day he had people come and remove his remaining items. Ray never set               |
|   | foot on my property again.   |
|   | 114. After the raid, I never heard from anyone with the City who wanted any additional               |
|   | information from me regarding Ray. I believed that whatever information they needed they             |
|   | had found on my computer and they didn't need my assistance.   |
|   | 115. After a couple of months the City decided to charge me personally with                          |
|   | exceeding the allowable plant counts by adding in the clones that I had not included in our          |
|   | counts because they were not rooted. I was arrested and booked into jail at which point I            |
|   | bailed out and got prepared for my arraignment.  |
|   | 116. A few days prior to my arraignment, I called the City Attorney assigned to my case              |
|   | and told him that I was going to plead Not Guilty based on the fact that the clones they had         |
|   | added into the plant counts were not viable since they had not yet rooted. He considered this        |
|   | and decided to drop the charges at least for the time being but he did reserve the right to          |
|   | recharge me in the future if additional information was presented.                                   |
|   | 117. I got a letter from the District Attorney stating that after a review of the evidence           |
|   | they had decided not to prosecute me but that the City of San Diego still held the option of         |
| ; | doing so.  |
| ; | 118. On March 15, 2017 I received notice that the City of San Diego would be charging                |
| , | me with 4 misdemeanor counts relative to my operations, 1 day before the statute of                  |
| 3 | limitations would have ran. I retained the legal services of Mr. Robert Bryson and went to<br>- 36 - |

the arraignment on April 5, 2016 where *the plan was for me to plead Not Guilty* and take it to trial if necessary.

119. Prior to the day of arraignment and entering my plea, I had not seen the report or any evidence that had been used to bring these 4 misdemeanor charges against me. The City Attorney met with Mr. Bryson and me in the hallway and presented us with the case file for our review. This was the first time that I became aware that Ray had been arrested and was awaiting trial on charges of his own. From the evidence I could see that Ray's other locations had been shut down and that he had made agreements with the City that, to avoid charges, he would agree to not operate an unlicensed MMCC business within the City of San Diego in the future. Clearly with his Pure Meds operations on my property he had violated those agreements.

120. After Mr. Bryson and I had spent about 30 minutes reviewing the documents, we asked to speak to Deputy City Attorney Mark Skeels, who was handling the matter. What Mr. Skeels told us was, that since Pure Meds did not reopen after the raid, which was what usually happened, the City was willing to offer me a deal in order to settle the matter without it going to trial.

121. Mr. Skeels told me that if I would agree to forfeit the \$30,000 in cash that had been seized from Pure Meds during the raid and plead guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a) violation, the other 3 charges would be dropped. As Mr. Skeels explained to me, pleading guilty to this single charge was my accepting that there had been a code violation on the property and I would be on probation for 3 years to assure that I would not violate this Code again. Mr. Skeels agreed that Mr. Bryson could take some time to consider this offer.

122. After discussing with Mr. Bryson that this offer seemed reasonable providing there was language added into the plea agreement that for the 3 years I would be on probation and - 37 -SUPPORTING DECLARATION because I agreed to waive my 4th amendment rights, I would maintain my Prop 215 medical cannabis cultivation rights and not be subject to what was still unknown medical cannabis cultivation limits as would be defined in Prop 64.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

123. Mr. Skeels asked why I wanted that language in the Plea Agreement and I told him that I had no problem proving over the 3 year course of my probation that as a medical cannabis patient, who cultivated cannabis at my property and planned on continuing to do so, I was in compliance with Prop 215 but that, based on what I knew of the Prop 64 law which was due to take effect on January 1, 2018, I wanted whoever was inspecting me and my property to hold me to a recreational standard that may, as the guidelines under Prop 64 were not yet finalized, conflict with a medical standard. The language in the Plea Agreement would be as much for my benefit as for that of any inspecting authority who would visit me over the course of the 3 years' probation.

124. Mr. Skeels considered this and agreed that as far as he and the City were concerned, adding language to the Plea Agreement to that effect was not a problem and that it would indeed provide for clarification of enforcement standards for those authorities who would be tasked with inspecting me and the property for Prop 215 compliance during the course of my 3 years' probation.

125. Having agreed to that, I suggested that Mr. Skeels also add language to the Plea Agreement that would include a limit of up to 4 Physician's Recommendations for those patients for whom I was growing cannabis. Mr. Skeels told us that adding language to that effect was not necessary because the Prop 215 statute didn't set a limit on Physician's Recommendations. He also told us that we simply needed to have those Physician's Recommendations available for inspection and that they had to be current. Mr. Skeels told us that all the Plea Agreement needed to state was that I would be retaining my rights under

> - 38 -SUPPORTING DECLARATION

Prop 215. With that, we agreed to the terms of the Plea Agreement and Mr. Skeels left us to await his return with the finalized Plea Agreement.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

126. When he returned a short time later, Mr. Bryson and I reviewed the Plea Agreement and saw that the language we had discussed about my retaining my rights under Prop 215 had been added. With that, Mr. Skeels then reviewed every element of the Plea Agreement with us and had me initial each box that was required. Once this was completed, we went before the Honorable Judge Rachel Cano.

127. While reviewing the Plea Agreement from the bench, Hon. Judge Cano spoke to me directly and asked why the Prop 215 language had been added into the Plea Agreement, I explained that with the obvious conflicts for me between Prop 215 and Prop 64, that I, as a medical cannabis patient who cultivated cannabis at this property, needed the standard I would operate under to be defined in this agreement or it would be subject to interpretation by any inspecting authority who would visit me during the course of my 3 years' probation. Judge Cano considered this and agreed that it was a simple and straightforward solution to what she and even the City saw as a way of bringing clarity to these evolving standards. With that, she accepted the Plea Agreement and I believed we were done. 128. In a wild turn of events that I can only describe as the most duplicitous bait and switch imaginable... Within days of Mr. Skeels convincing my attorney and I through his assurances of the terms of our plea agreement, the City filed a Lis Pendens on my property (April 18, 2017 - Over 1 year after the incident took place.) and began the process of selling it as a seized property asset, which I now became aware was what I had unknowingly agreed to in the Misdemeanor Health and Safety 11336 (a) code charge to which I had pled guilty in the Plea Agreement I had entered into with the City on April 5, 2017.

129. I immediately contacted Mr. Bryson and asked if he had known that, when I agreed to enter into this Plea Agreement, that it meant I was forfeiting my building and land to the - 39 -SUPPORTING DECLARATION

| 1        | City. That had NEVER been discussed prior to my accepting the Plea Agreement. In fact,          |
|----------|---|
| 2        | prior to accepting the Plea Agreement, Mr. Skeels had gone out of his way to go over the        |
| 3        | Plea Agreement in detail with us and had even added the language of how I would retain my       |
| 4        | Prop 215 rights over the course of my 3 years' probation. If Mr. Skeels knew then that I was    |
| 5        | giving up my building and land under this Plea Agreement, why wasn't it brought up at that      |
| 6        | time? Both Mr. Bryson and Mr. Skeels are officers of the court. Both had an obligation to       |
| 7        | tell me that's what my agreeing to a misdemeanor guilty plea of HS 11336 (a) meant and          |
| 9        | neither one did that. In fact, the last area of refuge I would have had prior to this Plea      |
| 10       | Agreement being accepted by the court would have been if Judge Cano had mentioned to me         |
| 11       | that the language we had added into the Plea Agreement where I retained my Prop 215             |
| 12       | rights was meaningless in light of the fact that pleading guilty to this one charge meant I was |
| 13       | not going to own the property anyway.   |
| 14       | 130. Mr. Bryson was as shocked as I was when he realized what we had agreed to. He              |
| 15<br>16 | told me that he had no idea that losing the building and land would be the consequence of       |
| 17       | entering into that deal with Mr. Skeels. With that, he wrote me a Declaration that stated       |
| 18       | that he was not aware and had he known that my losing the building and land was the             |
| 19       | consequence of entering into that Plea Agreement with the City, he would have advised           |
| 20       | against signing it. I received that Declaration from Mr. Bryson and dismissed him from any      |
| 21       | future representation.  |
| 22<br>23 | 131. I then reached out to Mr. Skeels and asked if he was aware that my agreeing to this        |
| 24       | single misdemeanor charge meant I would be giving up my property. He told me that he            |
| 25       | was not aware that that was the consequence either, but he would look into it and get back to   |
| 26       | me. I never heard back from him.  |
| 27       | 132. I then sought out and retained new counsel with attorney David Demian of the law           |
| 28       | firm Finch, Thorton & and Baird (FTB) representing me in this matter.                           |
|          | - 40 -<br>SUPPORTING DECLARATION  |

!

| 1  | 133. In a phone call between Mr. Demian and Mr. Skeels that was made on speaker phone            |
|----|--|
| 2  | from a conference room at the FTB offices, thus allowing me to hear what was being               |
| 3  | discussed, I learned what Mr. Skeels's real position on the Asset Forfeiture matter that my      |
| 4  | Plea Agreement had represented was. Mr. Skeels informed Mr. Demian that he too was on            |
| 5  | speaker phone as there were other attorneys from his office listening in on the conversation.    |
| 6  | 134. Mr. Skeels's stated position during that call was that we had a deal in that Plea           |
| 7  | Agreement and it would stand. According to him, my only options were to elect to                 |
| 8  | withdraw the Plea Agreement, after which the City would take me to trial on the 4                |
| 0  | misdemeanor charges that I was originally charged with, or to agree to pay the City              |
| 1  | \$100,000 and all charges would be dropped. What I was hearing was extortion, plain and          |
| 12 | simple.  |
| 3  | 135. Mr. Demian told Mr. Skeels that the \$100,000 payment he was seeking was                    |
| 4  | unacceptable and that the only thing that might work on my behalf would be to find a lesser      |
| 5  | amount in the interest of offsetting the legal fees I would have to incur in order to defend the |
| 6  | 4 misdemeanor charges. Mr. Skeels asked what that amount might be and Mr. Demian                 |
| 7  | responded with a counteroffer of \$5,000, referring to that amount as a nuisance payoff that     |
| 18 |  |
| 20 | he had been authorized to submit on my behalf. Mr. Skeels rejected the counteroffer and told     |
| 21 | Mr. Demian to get back to him if and when we were serious.                                       |
| 22 | 136. What was clear to me during that conversation was that the City wanted a payout and         |
| 23 | what they had seized during the raid was not enough. The HS code section violation to            |
| 24 | which I had pled guilty was not widely understood. This was a new tool for the City to use       |
| 25 | to shut down illegal dispensaries and Mr. Skeels knew it. He was not willing to negotiate        |
| 26 | because he felt he didn't have to. Mr. Skeels had Mr. Demian on speaker phone in his office      |
| 27 | so he could make a point to those listening in on his side that the City did in fact have the    |
| 28 | upper hand in these negotiations and that Real Property Asset Forfeiture was a tactic they       |
| -  | SUPPORTING DECLARATION   |

could employ in other cases where a landlord rented to a tenant who was not licensed to run a MMCC business. At one point in the conversation when Mr. Demian questioned Mr. Skeels's authority and skills in negotiating a settlement on behalf of the City, Mr. Skeels got upset that Mr. Demian would even question his professional qualifications. Mr. Demian, sensing that he had offended Mr. Skeels, immediately began apologizing and told Mr. Skeels that he would confer with me and respond with another offer. Mr. Skeels told Mr. Demian that the new offer would need to be near the \$100,000 mark or it would be rejected, and we would be wasting precious time and the property would be sold out from underneath me as the law allowed. 137. After that conversation, Mr. Demian admitted he was not the best person to represent me in further negotiations in this matter with Mr. Skeels. I needed to retain co-counsel who had experience in successfully negotiating with Mr. Skeels. They had to be able to defend me in this matter should we go to trial and that would start with them withdrawing my Plea Agreement based on my having been enticed to do enter it under fraudulent representation and incompetent counsel. With Mr. Bryson's declaration in which he admitted not knowing what the consequences of HS 11336 (a) were, I was hopeful that if the threat of withdrawing the Plea Agreement came from the right lawyer, that Mr. Skeels would want to settle the

matter without going to trial. With that in mind, I engaged the legal services of attorney Stephen G. Cline in anticipation of the Plea Agreement being withdrawn and my taking this matter to trial should Mr. Skeels and I not come to terms.

138. Mr. Cline reached out to Mr. Skeels by phone and told him that unless the City was willing to settle this matter for a much lower amount than the \$100,000 they were seeking, he had every intention of going before Judge Cano to request a withdrawal of the Plea Agreement. Mr. Cline was prepared to defend his request based on the fact that the Real Property (building and land) Asset Forfeiture was not listed in the records of items seized in -42 -

SUPPORTING DECLARATION

| 1   | the raid, nor was there ever any posting by either the officers or the City Attorney that the                                  |
|-----|--|
| 2   | building and land were considered part of the seized items. In addition, the TRO that the                                      |
| 3   | City had requested had been denied which meant that I was not party to my tenant's   |
| 1   | business operations, I had incompetent legal representation when I entered into the Plea                                       |
| 5   | Agreement and finally, neither Mr. Skeels nor Judge Cano had made me aware that the  |
| 5   | consequence of signing the Plea Agreement was the forfeiture of my Real Property, which  |
| 3   | was valued at approximately \$500,000 based on fair market value comparisons and up to 10                                      |
|     | times that should it ever qualify for a licensed MMCC business.  |
| )   | 139. I did not feel that Judge Cano would react well to what Mr. Cline was prepared to   |
|     | present to her if we did not reach a settlement and, if Mr. Skeels could be persuaded to relax                                 |
| 2   | his demands, it may not be necessary to do so.   |
| 3   | 140. After consideration, Mr. Skeels suggested that the amount be reduced to   |
| 1 · | \$50,000. Mr. Cline told him he would convey that message to me and get back to him. I   |
| 5   | felt that \$50,000 was still outrageous in light of the reasons that Mr. Cline had presented to                                |
| 7   | Mr. Skeels earlier, but when I considered the potential legal fees should this matter go to                                    |
| 3   | trial, I told Mr. Cline to return to Mr. Skeels with an offer of \$10,000 but with an  |
| 9   | authorization limit of \$25,000 should an increase be necessary.   |
|     | 141. Mr. Skeels rejected the offer of \$10,000 and said we would have to agree to an   |
|     | amount closer to the \$50,000 they were seeking, or this would go to trial. With that, Mr.                                     |
| 2   | Cline provided Mr. Skeels with our best and final offer of \$25,000 and advised Mr. Skeels                                     |
| 3   | that, should that amount be unacceptable, we were prepared to go to trial and win based on                                     |
| 5   | the merits of our case.  |
| 6   | 142. Mr. Skeels accepted the \$25,000 offer and the matter was turned back over to David                                       |
| 7   | Demian at FTB for finalization of the terms and document exchange. On October 4, 2017 a  |
| 8   | Stipulation for Judgement was executed showing the listed seized items from the raid and a<br>- 43 -<br>SUPPORTING DECLARATION |

.

| 1        | \$25,000 payment for full satisfaction on my Real Property, which they had listed as 6176-     |
|----------|--|
| 2        | 6184 Federal Blvd. I only own the 6176 Federal Blvd property but the Stipulated                |
| 3        | Judgement also covered the rental property I had next door.                                    |
| 4        | 143. On January 2, 2018 I made the \$25,000 payment to the City per the terms of the           |
| 5        | Stipulated Judgement using borrowed money.   |
| 6        | 144. What I take from this is that Mr. Skeels has now set a precedent in that a City can       |
| 7<br>8   | include the Real Property of the land owner in their seized assets regardless of whether or    |
| 9        | not that landowner had anything to do with the business their tenant was operating. While      |
| 10       | he wanted as much as he could get from me, it was more important to show those other           |
| 11       | prosecuting attorneys that this was a way of forcing landlords to assure their tenants were    |
| 12       | properly licensed when it comes to an MMCC dispensary. Landlords are now going to have         |
| 13       | to be those traffic cops which means that if the tenant has a license and then loses it during |
| 14       | the course of the tenancy, that landlord may face the same asset seizure and forfeiture        |
| 15<br>16 | actions that I did, whether or not they were aware of their tenant's actions.                  |
| 10       | LARRY GERACI   |
| 18       | 145. In late September 2016 I received a phone call from Mr. Larry Geraci. I had never         |
| 19       | met or heard of Mr. Geraci prior to that call. The purpose of Mr. Geraci's call was to inform  |
| 20       | me that he had become aware of my property from what he had seen from the Pure Meds            |
| 21       | situation and he wanted to know if I would be interested in selling him the property for the   |
| 22       | purposes of opening a licensed MMCC.   |
| 23<br>24 | 146. I told Mr. Geraci that the City had rezoned the property and that it was my               |
| 25       | understanding that it would no longer qualify for an MMCC business. Mr. Geraci told me         |
| 26       | that that was not necessarily the case and he would like me to consider what he had to say in  |
| 27       | a meeting that would be held at his office. I agreed to the meeting and met him in his office  |
| 28       | within a few days of his initial call.   |
|          | 44   |
|          |  |

.

147. I found that Mr. Geraci was a professional Financial Planner who operated out of 1 nice offices in the Kearny Mesa area of San Diego. He told me that his core business was 2 3 Financial and Tax Planning and that he represented clients in his professional capacity as an 4 Enrolled Agent. Mr. Geraci was also a real estate investor/developer and one of his 5 investments was buying specific properties in locations that can be converted into MMCC 6 retail cannabis businesses. 7 148. I asked Mr. Geraci how many MMCC businesses he had in operation and he told me 8 that he had multiple MMCC businesses whereby he would finance the purchase of the 9 property and pay for the licensing to get the business MMCC compliant. Once completed, 10 11 he would have others own and operate the MMCC business and he would get an ongoing 12 equity position in that business. Mr. Geraci told me he preferred to remain in the 13 background on these transactions since the perception of him being directly involved in 14 cannabis business may harm his other business enterprises. That did not come as a surprise 15 to me and I accepted that statement on face value. 16 149. Regarding the rezoning of my property, which from my understanding would now 17 make my property ineligible for an MMCC business, Mr. Geraci told me that he had special 18 19 knowledge and influence that would allow him to get my property through that process by 20 having it rezoned back into an MMCC compliant zone and then submitting the CUP 21 application so the MMCC could be run on that specific property. If anyone else had been 22 telling me this, I would have not believed them but Mr. Geraci appeared to have the 23 relationships, experience and financial wherewithal to make something like this happen. As 24 he was a licensed financial professional who is held to the highest fiduciary standards, I was 25 26 interested in pursuing these negotiations with him to see where they might lead. 27 150. At the time we were discussing his special relationships that would assist in getting 28 my property rezoned to an MMCC compliant zone, I was completely unaware that the City - 45 -SUPPORTING DECLARATION

of San Diego, which had rezoned my property to an ineligible MMCC compliant zone in January of 2016 while they were building a case against me and Pure Meds, had, once Pure Meds was shut down, once again rezoned the area and my property in April of 2016 without notifying me or any of the other property owners in the area.

Į.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

151. Mr. Geraci had to have already known this prior to our first meeting in early October 2016 that included discussing his special relationships that could have my property rezoned. He didn't need any special relations as the rezone had already occurred. That's why he knew from the moment he met me that he could get the CUP Application accepted. He just wasn't positive he could get it approved. For that reason, he lied to me about needing to get the rezoning done before he could even submit the CUP Application. Mr. Geraci was a fraud from the moment I met him. I just didn't know that at the time.

152. During that first meeting, Mr. Geraci told me that, due to the issue I had had with having rented to an illegal dispensary, I would need to sell the property to him and he would submit the CUP application in one of his employee's names, Rebecca Berry, because she had a clean record and would not be denied once the process began.

153. Mr. Geraci asked me how much I would want for the property and I told him I would agree to \$800,000 as long as I got an equity position in the monthly MMCC sales that amounted to \$10,000 or 10% of the net profits, whichever was greater and he agreed to that.
154. During October 2016 I met with Mr. Geraci at his office on several more occasions. We discussed in detail how, in addition to whatever he was willing to do to purchase and develop my 6176 property, I was interested in having him assist me in

identifying other properties where I could expand my work with 151 Farms. Like Ray

before him, I wanted him to understand that the only reason I wanted to sell the property

was so that I could afford to move into a larger property. I had no interest in owning or

- 46 -SUPPORTING DECLARATION managing an MMCC business so if that side of the equation worked for him, within the terms and conditions we agreed to, I could stay focused on my goals with 151 Farms. It was to be a win/win situation for the both of us. Mr. Geraci agreed to that and I told him I would draft a Memorandum of Understanding (MOU) that would act as a working document to memorialize this conversation and serve as the basis of our agreement once his lawyer had prepared it.

155. We had orally agreed to, among other things, a sales price of \$800,000 for the property contingent upon him obtaining the MMCC CUP approval from the City of San Diego and that was memorialized in the MOU I created and sent to Mr. Geraci. Upon approval of the MMCC CUP, the payments would be split into \$400,000 for me and another \$400,000 for Inda-Gro for relocation of the business. The terms for the relocation of the business were spelled out in a second working document I called the Service Contract. That Service Contract was sent along with the MOU and required that Mr. Geraci, if he were to actually acquire the property upon Approval of the CUP Application, would grant Inda-Gro the right to remain on the property at no rent until the plans were completed and accepted by the City of San Diego Development Services and he was ready to begin construction on the new MMCC. While Mr. Geraci never acknowledged either of my working documents in writing, he told me over the phone that he was fine with them and that they would be incorporated into a contract that his lawyer would prepare and I could make changes to the contract before we consummated our deal.

156. While I was waiting for his lawyer to send me the contract, Mr. Geraci asked me to come into his office on October 31, 2016. It was at this meeting that Mr. Geraci asked me to sign a City of San Diego CUP application form which listed Rebecca Berry as the qualifying applicant. Rebecca Barry was not present when I signed this and to my knowledge I have never even met her. Mr. Geraci told me he wanted this signed in preparation for when the -47 - SUPPORTING DECLARATION

| 1        | rezoning had been completed and the CUP Application could be submitted. According to           |
|----------|--|
| 2        | him, it would not and could not be submitted until the rezoning had taken place.               |
| 3        | 157. During our phone calls Mr. Geraci told me that the terms I had outlined in the MOU        |
| 4        | and Service Agreement were acceptable and that he would have his lawyer prepare a              |
| 5        | contract that would include these terms and that a \$50,000 non-refundable deposit which       |
| 6        | would not be contingent on the City of San Diego MMCC CUP approval would be paid at            |
| 7<br>8   | the time we signed that contract.  |
| °<br>9   | 158. Mr. Geraci told me that, in anticipation of the contract, he would like to immediately    |
| 10       | begin the process of getting the property rezoned so that the CUP application could be         |
| 11       | submitted, and he could pay me the entire \$50,000 as we had agreed.                           |
| 12       | 159. Mr. Geraci told me that he would like me to stop by his office and sign a receipt for     |
| 13       | \$10,000 which would be applied toward the \$50,000 earnest money. He also told me that        |
| 14       | this signed receipt would allow him and/or his agents to begin the process of getting the City |
| 15       | to rezone the property. The plan that Mr. Geraci had was that the rezoning might take 4-6      |
| 16<br>17 | weeks and he did not want to pay the entire \$50,000 until the rezoning had occurred and the   |
| 18       | CUP application could be submitted. This seemed reasonable to me and we set a meeting          |
| 19       | for November 2, 2016 in his office.  |
| 20       | 160. On November 2, 2016 when I arrived at the scheduled meeting with Mr. Geraci, he           |
| 21       | told me that he had already begun the initial process of getting the property rezoned and that |
| 22       | the CUP application may be ready in as little as 2 weeks. With that, he had me sign a 3        |
| 23       | sentence document that I considered a receipt which stated the \$800,000 sales price and that  |
| 24<br>25 | I was accepting the \$10,000 in a cash payment from him. He had a Notary Public certify        |
| 25       | that it was my signature on the document. What I was signing was not any sort of contract      |
| 27       | that held the terms we had discussed in my MOU and Service Agreement. It was most              |
| 28       | certainly not a Real Estate Contract as required by California law and Mr. Geraci, who held    |
|          | -48 -<br>SUPPORTING DECLARATION  |
|          |  |

CA Real Estate License number 01141323, knew that. During our meeting Mr. Geraci did not try to represent this as a final contract but as a receipt to get the rezoning process underway. I did not sense that he was trying to pull one over on me and felt that, in a professional capacity, he would not attempt something like that. I believed him and looked forward to seeing him make the things happen he said he and he alone had the skill sets to do. Nonetheless, when I got back to my office, I felt as though I should send him an email that would memorialize what was said to me when I signed that receipt.

161. Within hours of having signed the receipt I sent Mr. Geraci that email in which I asked him to acknowledge, in an email response, that what I just signed was not meant to be a final contract between us. Shortly thereafter I received his response stating that he had "no problem, no problem at all" acknowledging that this was not the final contract. Mr. Geraci's response to my email reassured me that he was operating in good faith and that the process, in the order he had described to me, had begun.

162. On November 15, 2016 Mr. Geraci asked me to sign another document that would allow me, as the property owner, to authorize his architect, Mr. Abhay Schweitzer, to view and copy records at the County of San Diego Tax Assessor's Office of Building Records. Signing that document requested by Mr. Geraci further led me to believe that I was the property owner until such time that the CUP Application was granted and I would sell the property to Mr. Geraci.

163. Over the course of the next several weeks I would, through phone conversations and various texts and emails, of which I have copies, inquire as to how the rezoning process was coming along. Mr. Geraci always responded that, while they were making progress, the rezoning had not yet been completed. He told me to be patient and that it would happen. He also said that he had a team working on this and that he had spent large sums of money, in all the right places, to see that the property would get rezoned. Again, I had no reason to -49-

|          | ·   |
|----------|---|
| 1        | doubt him since he had professional credentials and fiduciary duties that I believed would    |
| 2        | have prevented him from lying. One thing, however, was certain. The original 2 weeks had      |
| 3        | expired, and I had not yet been paid the remaining \$40,000 that he had promised.             |
| 4        | 164. In February 2017 I had several other parties contact me and inquire if my property       |
| 5        | was available for purchase. Those parties told me that my property was unique in that it fit  |
| 6        | the necessary requirements for an MMCC business. Each of these parties also told me that      |
| 7        | they too had special skills and connections that would ensure that this property was          |
| 8        | approved for an MMCC business. This made me wonder how many more people in the                |
| 9<br>10  | cannabis business had found out about my property. Had Mr. Geraci managed to get the          |
| 11       | rezoning done and just not told me so he wouldn't have to pay the \$40,000 balance on the     |
| 12       | non-refundable deposit? Since I didn't know for sure what I had in Mr. Geraci, I told those   |
| 13       | interested in the property to submit written offers of which I received two that were worth   |
| 14       |   |
| 15       | considerably more than the offer that Mr. Geraci had made me. If I found that Mr. Geraci      |
| . 16     | was not acting in good faith, I would have other offers to fall back on if the situation      |
| 17       | required it.  |
| 18       | 165. In February 2017, after still not receiving the contract that Mr. Geraci had promised    |
| 19       | me in November 2016, I demanded that he send it to me. It was becoming obvious that he        |
| 20       | was engaging in delay tactics and I wasn't sure why.  |
| 21       | 166. This got him moving and in late February 2017 I got a contract that his lawyer, Gina     |
| 22       | Austin of the Austin Law Group, had prepared on his behalf which I guess he expected me       |
| 23<br>24 | to sign without reading. This contract missed most of the elements that were in the MOU       |
| 25       | and Service Agreement, not the least of which was that in consideration for the sales price I |
| 26       | had set, I would receive 10% of the store's monthly net profits or \$10,000 per month,        |
| 27       | whichever was greater. My radar was on full alert.  |
| 28       |   |
|          | - 50 -<br>SUPPORTING DECLARATION  |
|          | SUPPORTING DECLARATION  |
| •        |   |

e0

| 1        | 167. I texted Mr. Geraci to ask if his lawyer had even read my MOU and the Service           |
|----------|--|
| 2        | Agreement, the terms of which Mr. Geraci had agreed to include in the final contract, and he |
| 3        | told me that she must have made a mistake and missed them in that draft. Mr. Geraci          |
| 4        | apologized and told me that he had not read the contract that Ms. Austin had prepared and    |
| 5        | that she had the working documents necessary to prepare our contract. With that, Mr.         |
| 6        | Geraci assured me that the revised version would include those terms and to expect it within |
| 7        | a few days.  |
| 8<br>9   | 168. On March 3, 2016, I received the Side Agreement to his Contract and, while it did       |
| 10       | include more of the MOU and Service Agreement terms that Mr. Geraci and I had agreed to      |
| 11       | in our conversations, it still fell woefully short of what had been agreed to in my working  |
| 12       | documents which, per Mr. Geraci, his counsel had to work from. Ms. Austin had                |
| 13       | incorporated the 10% or \$10,000 language but there was still highly prejudicial language in |
| 14       | the Side Agreement that I found unacceptable and was in no way was in the spirit of our      |
| 15       | early negotiations. For example, Ms. Austin called the \$10,000 payment "the total agreed to |
| 16<br>17 | amount" and stated that even that would have to be returned to Mr. Geraci in the event the   |
| 18       | CUP Application was not approved. This was not going well.                                   |
| 19       | 169. In addition to the obvious problems I was seeing from the contracts that Ms. Austin     |
| 20       | had prepared, Mr. Geraci was now requesting that we reduce the agreed upon \$10,000 a        |
| 21       | month to \$5,000 a month for 6 months until after the store had opened and they started      |
| 22       | to get some market share. It was now apparent to me that I needed to get to the bottom of    |
| 23       | this and verify whatever it was that Mr. Geraci had been telling me. What more evidence      |
| 24<br>25 | could there possibly be showing that the monthly equity stake was an integral term of the    |
| 26       | agreement we actually made months prior!?!   |
| 27       | 170. At this point it didn't matter what Mr. Geraci told me. What the contract prepared      |
| 28       | by Ms. Austin now proffered was that the \$10,000 paid by Mr. Geraci was the total deposit   |
|          | SUPPORTING DECLARATION   |

amount that was going to be paid. It was apparent that no matter what, Mr. Geraci was not 1 to be trusted and he was running the clock and using his lawyer, Ms. Austin, as tools to 2 3 defraud me of my property as the terms we had originally agreed upon were no longer 4 acceptable to him. Nonetheless I had to know the current status of my property zoning to 5 see where I stood. 6 171. Around March 15, 2017 I decided to call the City of San Diego Development 7 Services to find out for myself if my property had been rezoned back to an MMCC 8 compliant zone or if, as Mr. Geraci kept telling me, it was still in process and the CUP had 9 not yet been submitted. What I found out was astounding! 10 11 172. Ms. Firouzeh Tirandazi, Development Project Manager for the City of San Diego 12 Development Services told me that my property had been rezoned to an MMCC compliant 13 zone in April 2016. 14 173. Mr. Geraci had been lying to me since the beginning. When he had me sign the CUP 15 application listing Rebecca Berry as the qualifying applicant in October 2016 he knew then 16 that the rezoning had occurred and that he could submit the CUP Application immediately. 17 And that's exactly what he did. 18 19 174. Per Ms. Tirandazi, the CUP Application with Ms. Berry's name on it that Mr. Geraci 20 had me sign was submitted on October 31, 2016, just days before I signed his receipt of the 21 \$10,000 which I was paid on November 2, 2016. Mr. Geraci had needed me to sign that 22 document so he could, at some point in the future, argue that the document I signed on 23 November 2, 2016 was the one and only contract. Mr. Geraci had never intended to honor 24 the terms to which we had agreed in my MOU and Service Agreement. 25 175. After my call to Ms. Tirandazi, I contacted Ms. Berry and Mr. Geraci to tell them 26 27 that I had contacted her and now knew that Mr. Geraci had been lying to me all along and 28 - 52 -

| 1        | that I had just discovered his fraud. Mr. Geraci contacted me by text to ask for a face-to-   |
|----------|---|
| 2        | face meeting.   |
| 3        | 176. On March 17, 2017 in an email I sent to Mr. Geraci, I declined his request for           |
| 4        | another face-to-face meeting and stipulated that all future communications between us be in   |
| 5        | writing. I demanded that he honor the terms of our MOU and Service Agreement, that the        |
| 6        | \$40,000 balance of the non-refundable \$50,000 be paid immediately and that, regarding the   |
| 7        | \$10,000 or 10% of the net profits, whichever was greater, we agree to use a 3rd party        |
| 8<br>9   | accountant to assure proper distribution. I required that Mr. Geraci accept these terms in    |
| 10       | writing no later than March 20, 2017 at 12:00 or I would cease any further business with      |
| 11       | him.  |
| 12       | 177. On March 21, 2017, having received no response from Mr. Geraci, I sold my                |
| 13       | property to Richard J. Martin for \$2,000,000 and a guaranteed 20% equity in a new MMCC       |
| 14       | business should it be established. The non-refundable earnest money was \$100,000, which I    |
| 15       | have long since expended to use to pay legal fees I had incurred in the matter with Mr.       |
| 16<br>17 | Geraci. Unlike Mr. Geraci's so called contract, the sales contract with Mr. Martin was done   |
| 18       | on a notarized Commercial Property Purchase Agreement with an Addendum that                   |
| 19       | acknowledged my MOU and the terms 1 set forth within it.                                      |
| 20       | 178. Also on March 21, 2017, after selling the property to Mr. Martin, I went to              |
| 21       | Development Services to meet with Ms. Tirandazi in person to see if the CUP application       |
| 22       | that they were processing with Ms. Berry's name on it could be transferred to me or an        |
| 23       | assignee of mine. Ms. Tirandazi told me that the current CUP Application they had in          |
| 24<br>25 | process for Ms. Berry had been signed by me and that the only way it could be reassigned      |
| 25<br>26 | was if Ms. Berry relinquished her rights to it or a court ordered them to reassign it. I knew |
| 27       | that getting Mr. Geraci and Ms. Berry to relinquish their rights to the current CUP           |
| 28       | application in process was not an option so I asked Ms. Tirandazi if I could submit another   |
|          | - 53 -<br>SUPPORTING DECLARATION  |
|          |   |

.

| 1        | CUP application to run concurrent with the application in Ms. Berry's name. This way my       |
|----------|---|
| 2        | application would already be in process once the City figured out that neither Mr. Geraci nor |
| 3        | Ms. Berry had a Grant Deed in their name. Ms. Tirandazi told me that the City of San          |
| 4        | Diego's policy was that only one CUP application per address would be accepted and that,      |
| 5        | as Ms. Berry's was already being processed, I could not submit one at that time. Since I      |
| 6<br>7   | now knew that Mr. Geraci and Ms. Berry were not going to get final approval on the CUP        |
| 8        | without a Grant Deed in their name, I had to consider my legal options.                       |
| 9<br>9   | 179. On March 22, 2017 I received a letter from Mr. Geraci's new attorney, Michael            |
| 10       | Weinstein, informing me that as a result of my having contacted Ms. Tirandazi to see about    |
| 11       | having Ms. Berry's CUP application reassigned, Mr. Geraci had instructed Mr. Weinstein to     |
| 12       | file a Lis Pendens on my property and a lawsuit against me seeking to have me honor what      |
| 13       | Mr. Geraci now considered to be the "end all be all contract" I had signed with him on        |
| 14<br>15 | November 2, 2016. While Mr. Weinstein threatened me with the great harm that would            |
| 15       | befall me should this matter go to trial, he also encouraged me to negotiate with them as he  |
| 17       | stated there was still time to do so. Because I had not received a response from Mr. Geraci   |
| 18       | by the deadline I had given him of March 20, 2017 and having subsequently sold the            |
| 19       | property to Mr. Martin, 1 had no intention of negotiating anything further with either Mr.    |
| 20       | Geraci or Mr. Weinstein.  |
| 21       | 180. Until I could resolve the CUP issue with the City of San Diego for what would now        |
| 22<br>23 | be the new property owner, Mr. Martin, I needed to see if there was a way to maintain the     |
| 24       | status of Ms. Berry's CUP application, so I wouldn't waste time submitting another            |
| 25       | application after Ms. Berry's application was deemed incomplete because the Grant Deed        |
| 26       | would never be in her or Mr. Geraci's name. As far as my hope to negotiate settlement         |
| 27       | involving Mr. Geraci relinquishing his rights to Ms. Berry's CUP, telling Mr. Weinstein that  |
| 28       | I had sold the property to Mr. Martin was not a good strategy.<br>- 54 -                      |
|          | SUPPORTING DECLARATION  |
|          | 1   |

| 1        | 181. On May 9, 2017 in an email Mr. Weinstein suggested a settlement whereby Mr.               |
|----------|--|
| 2        |  |
| 3        | Geraci would, among other things, increase his offer to purchase the property to \$925,000     |
| 4        | and pay the \$50,000 non-refundable earnest money but I would have no equity position in       |
| 5        | the new dispensary and, while Ms. Berry's CUP application was being processed, I would         |
| 6<br>7   | agree to cease all cannabis related cultivation activity on the property within 2 days of      |
| 8        | signing this agreement.  |
| 9        | 182. I found the May 9, 2017 settlement offer confusing. Why did Mr. Geraci care if I          |
| 10       | was cultivating cannabis on site? That had never come up before and now it was a condition     |
| 11       | of the "improved" settlement offer. Beyond that, Mr. Geraci proved that no matter who he       |
| 12       | had representing him, he was not to be trusted. There was no mention of the 10% equity         |
| 13       | position with a \$10,000 a month guaranteed minimum that was preeminent in our original        |
| 14       | negotiations. What Mr. Weinstein's settlement offer suggested to me was that, while his        |
| 15<br>16 | client was at his core a snake, something else was motivating him to be concerned about        |
| 10       | what my current activities entailed. I had seen and heard enough.                              |
| 18       | 183. On May 12, 2017 I filed a <i>Pro Se</i> cross complaint thinking that that might convince |
| 19       | Mr. Geraci to back down from what, in my mind, was an unwinnable situation for him             |
| 20       | regarding the purchase of my property. It did not, however, have that effect so I requested    |
| 21       | that David Demian represent me and take the case over.   |
| 22       | 184. On June 29, 2017 I filed a Notice of Substitution naming David Demian as new              |
| 23<br>24 | counsel on my behalf.  |
| 25       | 185. On September 28, 2017 Mr. Weinstein filed a Notice of Demurrer/Motion to Strike           |
| 26       | which was his attempt to limit the underlying agreements of my case to the single 3 sentence   |
| 27       | document I had signed on November 2, 2016 as the only document that should be                  |
| 28       |  |
|          | - 55 -<br>SUPPORTING DECLARATION   |
|          |  |

.

-

Ш

considered. He did not want anything else that transpired between me and Mr. Geraci to be considered. 186. On October 24, 2017 Judge Wohlfield issued a Tentative Ruling denying the Demurrer which was good news for me since my supporting documents against Mr. Geraci were primarily supported by the written communications that occurred after the November 2, 2017 document was signed. 187. With the Demurrer having been denied, my next concern was that the likelihood of Mr. Geraci getting the property after all the evidence was heard had to be of grave concern to him. If he were not to acquire the property, then all the work he was doing on the CUP application would be for naught and he would suffer financially. It is not unreasonable to think that Mr. Geraci might try to cut his losses by having Ms. Berry's CUP, which he completely controlled, purposely denied by instructing his agent(s) to create a scenario wherein that would be the result. In other words, if Mr. Geraci can't have this MMCC dispensary, no one else will either. 188. Should Mr. Geraci decide to sabotage Ms. Berry's CUP application, it would create a huge financial loss for both me and for Mr. Martin. I had to do something to protect my interests in the property by seeking protection from the court. By having the court appoint a Receiver who would give them oversight into what was happening on Ms. Berry's CUP, it

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26 27

28

would assure that the CUP process is followed and maintained. If Mr. Geraci felt he was going to prevail on the Breach of Contract claim he had against me, he would have not been opposed to my seeking a Temporary Restraining Order against him that would afford me this protection. That was not the case.

opposed to losing the Breach of Contract case he had against me now that his Demurrer had been denied and all of the evidence subsequent to the November 2, 2017 document would come into consideration. We believed that while our request for a Writ of Mandate may not be granted, the TRO would be granted.

190. Mr. Demian had 4 or 5 relevant arguments contained within his Points and Authorities in his TRO motion that were cogent and compelling to the court in granting the TRO (none of the *relevant arguments towards granting the requested relief* were apparently raised by him). Furthermore, Mr. Weinstein should have had no opposition to our request for a TRO if Mr. Geraci actually believed he would prevail in the Breach of Contract suit against me and he would be awarded the property under the terms of the November 2, 2017 document I signed. If, on the other hand, Mr. Geraci actually believed that he would lose the Breach of Contract suit now that all the evidence would be heard then Mr. Geraci knew he had to vigorously oppose our request for a TRO or he would not have an opportunity to sabotage Ms. Berry's CUP which was in process with the City of San Diego Development Services and in his complete control.

191. In making his decision on the TRO motion, Judge Wohlfield listened to the oral arguments raised by Mr. Weinstein and Mr. Demian. Mr. Demian only raised the least relevant point in his oral arguments before Judge Wohlfield, stating that we should be granted the TRO based entirely on the constitutional protections that are fundamental to property owners maintaining control of their property. The only reason Mr. Demian raised that singular point and not the others is because this was the point he was most familiar with from having successfully argued it in a similar case for another client. Mr. Demian was not prepared to argue the other, more pertinent issues relevant to my case in front of the court. Had Mr. Demian's oral arguments included a reference to Judge Wohlfied's previous ruling on the Demurrer and shown the real harm in not having the TRO for his client's court -57 -

| 1        | supervised protection, it would have been simply a matter of Judge Wohlfield supporting his |
|----------|---|
| 2        | previous position in denying the Demurrer and looking at ANY of the supporting evidence     |
| 3        | that Mr. Demian would have asked him to reference prior to making his decision. Mr.         |
| 4        | Demian did none of that while Mr. Weinstein successfully argued that the TRO was not        |
| 5        | necessary as it could potentially harm Ms. Berry's CUP process and that Mr. Geraci was      |
| 6        | going to win the Breach of Contract case based solely on the November 2, 2017 document      |
| 7<br>8   | that 1 had signed.  |
| °<br>9   | 192. Judge Wohlfield denied the TRO on the grounds that Mr. Demian had not provided         |
| 10       | him with sufficient evidence to warrant the court's protection of me prior to this matter   |
| 11       | being settled in trial.   |
| 12       | 193. Immediately after the hearing, Mr. Joe Hurtado who, as my litigation investor, was     |
| 13       | present to ensure that both my and Mr. Martin's legal interests were being protected, met   |
| 14       | Mr. Demian in the hallway outside the courtroom. Mr. Hurtado was livid. Having the TRO      |
| 15<br>16 | denied due to the incompetence Mr. Demian had shown in the courtroom was                    |
| 17       | egregious. For Mr. Demian not to bring the essential elements of the motion to Judge        |
| 18       | Wohlfield's attention while Mr. Weinstein successfully argued their Breach of Contract case |
| 19       | was, according to Mr. Hurtado, "the worst performance he had ever seen by a lawyer!" Mr.    |
| 20       | Demian looked down at his shoes and mumbled something about how he had tried and had        |
| 21       | to leave to go to another meeting.  |
| 22       | 194. After Mr. Demian left, Mr. Hurtado called to tell me what had happened. I was livid    |
| 23<br>24 | too. There was no excusing Mr. Demian's performance. I immediately called Mr. Demian        |
| 25       | to hear for myself what he felt went wrong and he told me that "it did not go as he had     |
| 26       | hoped." With that Mr. Demian told me he thought this would be a good time for me to seek    |
| 27       | alternative counsel and informed me he would be withdrawing from the case.                  |
| 28       |   |
|          | - 58 -  |

SUPPORTING DECLARATION

195. On December 12, 2017, representing myself, I had a hearing in front of Judge Wohlfield for a Motion to Reconsider his ruling on the TRO. While I am not an attorney, I was fully prepared to argue the supporting elements of the motion that Mr. Demian had not raised and felt it would give the court the opportunity to see why I had an immediate interest in seeking court supervised protection through the TRO. 196. I arrived at the hearing and was immediately told by Judge Wohlfield, before I could even speak, that he was denying my Motion for Reconsideration on procedural grounds. I was not allowed to say anything. Mr. Weinstein applauded the denial stating that the Writ of Mandate was due to be heard on January 26, 2017 and having a TRO granted prior to that 12 hearing was unnecessary. What I was not given the opportunity to say was that the reason I was there and representing myself was that if the court didn't intervene on my behalf immediately, the harm that Mr. Geraci could cause me would be done before that hearing. 197. When I walked out of the courtroom I felt like the world was closing in around me. I 16 started feeling dizzy and had a hard time standing or even speaking. I thought it was temporary but since I was prone to seizures, I decided to go the hospital and have myself checked out. I did and was told was that I had suffered a Transient Ischemic Attack 20 (TIA). A TIA is a mini-stroke which is caused when stress creates loss of blood to the brain. I am hoping I don't ever have another one of these as I felt helpless in its grasp. 22 198. I did not agree with Judge Wohlfield's decision. I did not feel that he had considered the elements which supported my urgency to be granted the TRO. In the interest of protecting myself from the harm Mr. Geraci was capable of inflicting on me, I had no choice 25 but to seek an Appellate Court ruling on my TRO motion wherein they would consider all 26 27 the facts and supporting evidence that Judge Wohlfield had not considered when denying me 28 that protection. - 59 -

1

2

3

4

5

6

7

8

9

10

11

13

14

15

17

18

19

21

23

24

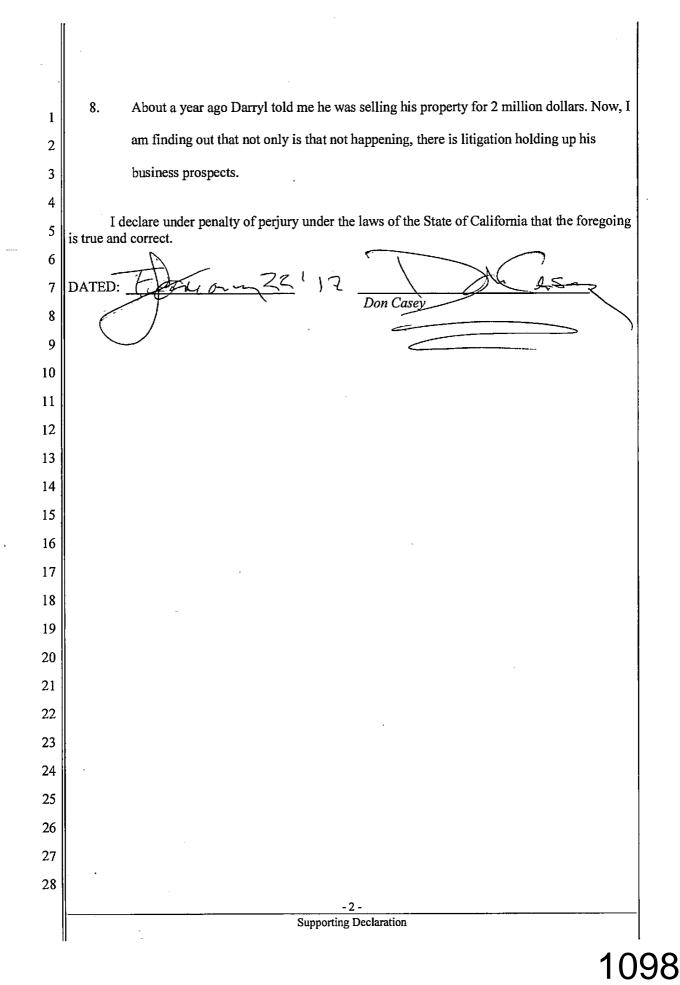
SUPPORTING DECLARATION

| 1        |                           |   |
|----------|---------------------------|---|
| 1        | 199. On December 1        | 8, 2017 I filed a Notice with the Court that I will be appealing Judge  |
| 3        | Wohlfield's decision a    | nd will be requesting that the matter be expedited due to its urgency.  |
| 4        | 200. With everythin       | g I have been going through legally, the stresses that I find myself    |
| 5        | under have affected my    | health and those opportunities that I might have pursued for myself,    |
| 6        | my loved ones and my      | employees. I no longer sleep through the night and have anxiety         |
| 7        | attacks that are difficul | t to manage. I have had heart palpitations. I find that my focus and    |
| 8<br>9   | attention to the details  | necessary to run my business have suffered. My personal and             |
| 10       | professional relationsh   | ips are in jeopardy.  |
| 11       | 201. In addition to the   | ne legal issues I'm dealing with, I have tried to maintain my Inda-Gro  |
| 12       | lighting business by in   | roducing a new LED Grow light to our lineup for which I have            |
| 13       | applied for a provision   | al patent. Developing this new light and the software and controls      |
| 14       | that will run it have be  | en somewhat cathartic in that it takes my mind off of the legal issues  |
| 15       | I'm confronting but by    | no means am I able to give Inda-Gro the attention it deserves when      |
| 16<br>17 | I'm consumed with the     | stresses I face daily as a result of Mr. Geraci and the pressure he has |
| 18       | put on me.                |   |
| 19       |                           |   |
| 20       | I declare under penalty   | of perjury under the laws of the State of California that the foregoing |
| 21       | is true and correct.      | All   |
| 22       | DATED: /-20-18            | M. Atta   |
| 23       |                           | DARRYL COTTON   |
| 24<br>25 |                           |   |
| 26       |                           |   |
| 27       |                           |   |
| 28       |                           |   |
|          |                           | - 60 -<br>SUPPORTING DECLARATION  |
|          |                           |   |

| 1        | I,          | DON CASEY, hereby declare as follows:  |
|----------|-------------|--|
| 1<br>2   | 1           | have personal knowledge of the facts I state below, and if I were to be called as a  |
| 3        | witness, 1  | I could competently testify about what I have written in this declaration.   |
| 4        | 1.          | In my career, I have been a collegiate basketball coach at Temple University, an NBA   |
| 5        |             | coach for the Los Angeles Clippers and the New Jersey Nets. I have also worked as an   |
| 6        |             | assistant coach with the Chicago Bulls (1982–1983) and Boston Celtics (1990–1996).   |
| 7        | 2.          | From 1993-2000 I was the vice-chairman of the President's Council on Physical Fitness  |
| 8        | 2.          |  |
| 9        | _           | and Sports and was personally appointed by President Clinton.  |
| 10       | 3.          | Currently I am a board member and National Trustee for the ALS Foundation <sup>1</sup> .   |
| 11       | 4.          | After meeting and befriending Mr. Cotton, he has been working extensively on   |
| 12       |             | developing a very specifically genetically engineered strain of cannabis designed for  |
| 13       |             | those suffering from ALS.  |
| 14       | 5.          | He is calling this strain the "Casey Cut" as a tribute to my mother who died of ALS in   |
| 15       |             | 1969; it was a joint endeavor to help those suffering from this neurodegenerative  |
| 16<br>17 |             | disease.   |
| 18       | 6.          | Because of Darryl's efforts to aid those with ALS, I strongly support him and 151  |
| 19       |             | Farms. I have brought ALS patients to whom Darryl has provided cannabis products at  |
| 20       |             | no charge in an attempt to alleviate their pain and suffering.   |
| 21       | 7           |  |
| 22       | 7.          | The goal of developing a highly concentrated cannabidiol strain of cannabis has the  |
| 23       |             | purpose of helping alleviate the pain and adverse effects ALS patients contend with  |
| 24       |             | while working to help repair the underlying neurodegenerative conditions that these  |
| 25       |             | patients suffer from.  |
| 26       |             |  |
| 27<br>28 | directly wi | Washington, D.C., the ALS Association coordinates the federal and state advocacy programs, works the Congress, the White House, other federal agencies and other national organizations, and provides and support for ALS Association advocates. |
|          |             | Supporting Declaration   |

.

~



| 1        | I, MIC  | HAEL KEVIN MCSHANE, declare:  |
|----------|---------|---|
| 2        | 1.      | I have personal knowledge of the facts I state below, and if I were to be called as a           |
| 3        |         | witness, I could competently testify about what I have written in this declaration.             |
| 4        | 2.      | I have been HIV positive for over 30 years.   |
| 5        | 3.      | In 2009 I developed debilitating skin cancer. That is when I became familiar with the           |
| 6        |         | medical cannabis community.   |
| 7        | 4.      | I have elected to treat my HIV and cancer exclusively through using cannabis oil extracts       |
| 8        |         | and other cannabis-based derivatives.   |
| 9<br>10  | 5.      | Mr. Cotton has wonderful ethics and his moral compass is unparalleled. Having become            |
| 11       |         | familiar with people of all walks of life in the marijuana industry, I find Mr. Cotton to be in |
| 12       |         | stark contrast to many of the characters I have come across. I have found most                  |
| 13       |         | establishments are not actually patient-oriented and some seem borderline criminal. Greed,      |
| 14       |         | profit and self-serving platitudes are the rule despite the reality of patients' needs and the  |
| 15       |         | purpose behind Prop. 215 and the spirit behind people's support for Prop 64.                    |
| 16<br>17 | 6.      | Let me be clear, Mr. Cotton is fully committed to helping people with a laser-focus on the      |
| 18       |         | medicinal purposes and benefits of cannabis specifically tailored to increasing the             |
| 19       |         | therapeutic benefits to those of us with chronic and terminal diseases.                         |
| 20       | 7.      | Just this week I have had a severe flare up with my cancer and I don't know if I will be alive  |
| 21       |         | long enough to hear the results of Mr. Cotton's case. But what I do know is that Mr. Cotton     |
| 22       |         | and his dedication to helping people that are suffering is genuine and the relief that he helps |
| 23       |         | provide is a comfort and a service that at this time hospitals simply do not provide.           |
| 24<br>25 | I certi | fy under penalty of perjury under the laws of the State of California that the foregoing        |
| 25<br>26 |         | and correct:  |
| 20<br>27 | 1/      | 4/2018 /s/Michael McShane   |
| 28       | (Date)  |   |
| 20       | <br>    | - 1 -   |
|          |         | Supporting Declaration  |

| 1          |    | I, Shawna Salazar, hereby declare:   |
|------------|----|--|
| 2          | 1. | I have personal knowledge of the facts I state below, and if I were to be called as a  |
| 3          | 2  | witness, I could competently testify about what I have written in this declaration.<br>I met Darryl in 1999 when he was the proprietor of Fleet Electrical and I was hired to work |
| 4          | 2. |  |
| 5          | 2  | as a dispatcher for his company.   |
| 6          | 3. | Over time I got to know Darryl on a personal level and we became close to the point where  |
| 7          |    | we began dating and our relationship evolved into a personal one.  |
| 8          | 4. | I am proud to say that we have now been in an exclusive personal relationship for over 17  |
| 9          |    | years and I continue to work with him in his business ventures as my assistance is required.   |
| 10         | 5. | As I know Darryl on both a personal and professional level, I am in a unique position to   |
| 11<br>12   |    | speak to how passionate he is in any venture he decides to pursue.   |
| 12<br>13   | 6. | In 2010 he began focusing much of his attention and resources towards plant lighting and   |
| 14         |    | opened Inda-Gro, which manufactured induction grow lights. I saw that company grow in  |
| 15         |    | size and stature until he recognized that induction technology was being phased out and  |
| 16         |    | decided to expand the product line into LED plant lighting.  |
| 17         | 7. | It has always been personally rewarding to see Darryl create these products and see his pride  |
| 18         |    | in knowing that the plant quality is improved based on his designs. This is especially true  |
| 19         |    | when it comes to medical cannabis since Darryl uses it personally to help combat his own   |
| 20         |    | condition of nocturnal seizures.   |
| 21         | 8. | Many people have toured 151 Farms. This farm was created to not only prove our new   |
| 22  <br>23 |    | products but to show the community how energy and water savings can be employed in an  |
| 23         |    | urban garden environment. Darryl's dream has always been to take this model to a larger  |
| 25         |    | •  |
| 26         |    | audience and expand to a larger facility.  |
| 27         | 9. | When Darryl told me in September 2016 about the property being sold to a businessman   |
| 28         |    | named Larry Geraci, I was at first hesitant as to what the impact would be on our business   |
|            |    | - 1 -<br>Supporting Declaration  |
|            | İ  |  |

|        | :   |
|--------|---|
| 1      | and the employees that worked here. Darryl relieved me of those concerns when he told me          |
| 2      | that with the Geraci purchase we not only would we have a good deal on the property but           |
| ;<br>; | that because Geraci was involved in other real estate ventures he would help to make us           |
| 4      | aware of a larger property that would serve to meet our future needs. Sadly, that has not         |
| 5      | been the case.  |
| 5      | 10. The stresses that the failed Geraci negotiations and subsequent litigation have put Darryl    |
| 7      | under have been indescribably hard to watch.  |
|        | 11. I have seen Darryl go from a happy, outgoing person to one who at times will stare into       |
| )<br>) | space and mumble to himself. He is short tempered and not available to those who used to          |
| 1      | be closest to him.  |
| 2      | 12. He spends most of his days and even nights at the office trying to fix what he sees as beyond |
| 3      | his control.  |
| 4      | 13. He is fearful of losing everything he has worked for and nothing anyone says or does can      |
| 5      | bring him any consolation. Frankly, it is a horrible thing to watch and it has led to us not      |
| 6      | having much of a relationship any more.   |
| 7      |   |
| 9      | I declare under penalty of perjury under the laws of the State of California that the foregoing   |
| 0      | is true and correct.  |
| 1      | DATED:  |
| 2      |   |
| 3      |   |
| 4      |   |
| 5      |   |
| 27     |   |
| 28     |   |
|        | - 2 -<br>Supporting Declaration   |

|          | I. SEA    | N MAJOR, declare as follows:  |
|----------|-----------|---|
| 1        | :         | I was a sergeant in the United States Marine Corps. I served from 2009 to 2016 including a      |
| 2<br>3   |           | tour in Afghanistan.  |
| 4        | 2         | I suffered 4 major traumatic brain injuries while in the service and currently suffer from      |
| 5        | <b>2.</b> | PTSD.   |
| 6        | 2         | Currently, I am prescribed more than 20 different variations of pills. Of all the medications,  |
| 7        | 5.        |   |
| 8        |           | I find the holistic approach to reap the most benefits. I find far more relief in medical grade |
| 9        |           | cannabis geared towards increasing the yield of cannabinoids proven to have a multitude of      |
| 10       |           | medical benefits rather than just high THC to get people "high." This type of medicine is       |
| 11       |           | what I see as the most promising future area for further medical and therapeutic research.      |
| 12       | 4.        | I believe high-CBD medical cannabis is safer and more effective for veterans' recuperation      |
| 13       |           | than pharmaceutical options, and both 1, and Darryl Cotton want to raise awareness and          |
| 14<br>15 |           | foster change.  |
| 15       | 5.        | In October 2015 I became the first, and to-date only, active duty Marine to be approved to      |
| 17       |           | use cannabis to treat my medical conditions. Since being granted an approval to use             |
| 18       |           | cannabis cultivation as a way to help combat the stresses that I have dealt with after having   |
| 19       |           | returned from active service I have been devoted to spreading awareness.                        |
| 20       | 6.        | Currently, I am in production of a documentary television program that is to be distributed     |
| 21       |           | through Netflix.  |
| 22       | 7.        | I have had multiple news outlets write articles about me and I speak nationally about           |
| 23       |           | organically grown cannabis, the Veteran community, and the positive benefits of cannabis        |
| 24       |           | on medical/psychological conditions that affect our wounded warriors.                           |
| 25       |           | I became acquitted to Darryl Cotton and 151 Farms after hearing the positive things Mr.         |
| 26<br>27 | 0.        |   |
| 27       |           | Cotton is doing in developing sustainable gardens that combine healthy foods to be donated      |
| 20       |           | to the community with hops for San Diego's vibrant beer community and medical grade             |
|          |           | Supporting Declaration  |

.

|        | cannabis for people like myself with legitimate medical needs that are not being adequately |
|--------|---|
|        | addressed by big pharmaceutical companies.  |
| 9.     | I reached out to Darryl and 151 Farms as a way to get involved with their work in growing   |
|        | medical cannabis for those who require it.  |
| 10.    | I have seen first-hand the care Mr. Cotton puts into his passion, which is helping people   |
|        | understand and receive, natural, non-pharmacological healing.                               |
| 11.    | Mr. Cotton uses a sustainable method of using a "closed system" irrigation involving fish,  |
|        | to plants (cannabis and vegetables) and he donates the grown food back to poor              |
|        | communities in San Diego.   |
| 12.    | For all the above reasons I see what Mr. Cotton is doing as a service to his community and  |
|        | he is setting an example to the rest of the state on how card-carryings medical             |
|        | recommendation patients should be prioritized while also being socially engaged and aware.  |
|        | I declare under penalty of perjury under the laws of the State of California that the       |
| forego | ing is true and correct.  |
|        |   |
| DATE   | D: January 22, 2018 /s/Sean Major   |
|        | Sean Major  |
|        |   |
|        |   |
|        |   |
|        |   |
|        |   |
|        |   |
|        |   |
|        |   |
|        | - 2 -   |

i.

| 1        | I, ( | Cindy Jackson, hereby declare as follows:   |
|----------|------|---|
| 2        |      | ave personal knowledge of the facts I state below, and if I were to be called as a witness, ould competently testify about what I have written in this declaration.                           |
| 3        | 1.   | I have worked as a bookkeeper for Darryl Cotton since 1997. In that time, I have seen him grow from a small, sole proprietor, electrical contractor employing around 6 employees to           |
| 5<br>6   |      | becoming an incorporated, Union-shop employing more than 90 electricians and a successful equipment rental company.   |
| 7<br>8   | 2.   | When the economy slowed down in the mid-2000s the need for both companies' products   |
| 9        |      | and services dwindled. As a result, Darryl sold off the rental equipment and began to focus<br>on his other passion: plant lighting.  |
| 1        | 3.   | In 2010, Darryl created Inda-Gro, and became a manufacturer of induction grow lights. His   |
| 13       |      | focus was on creating lights and controls to improve plant response in both quality and yield.  |
| 15       | 4.   | This company was especially important to him as it relates to cannabis cultivation since he has needed it to combat some of his own personal medical conditions.                              |
| 16       | 5.   | In addition to being a businessman of the highest ethical standards, Darryl has always been   |
| 18<br>19 |      | interested in patients' rights and their access to medical cannabis. It is for this reason he has<br>invested countless hours and money into seeing that all those who require fresh food and |
| 20<br>21 |      | medical grade cannabis have the tools and the legal resources to do so.   |
| 22       | 6.   | Having known Darryl for as long as I have, I can honestly say that the Darryl I used to know<br>is not the same person that I see today.  |
| 24       | 7.   | Ever since Darryl met Larry Geraci, he was led to believe that the purchase of the property   |
| 25<br>26 | 8.   | at 6176 Fed. Blvd. would help Darryl expand operations and pursue greater opportunities.<br>The current legal entanglements with Mr. Geraci have caused Darryl and those of us who            |
| 27       |      | have been loyal to him and his causes stresses that are impossible to fully describe.   |

| 9. These extreme stresses, brought on by this litigation, are causing Darryl great physical,                            |
|---|
| emotional, and financial harm that affects his ability to conduct business or plan on future                            |
| endeavors. If there is any remedy that the court might provide to protect Mr. Cotton and hi                             |
| rights within the law, I would pray that the court do so.   |
|   |
| I declare under penalty of perjury under the laws of the State of California that the foregoing is true<br>and correct. |
| DATED: 1/22/18 Cinden L Jacks   |
| Cindy Jackson   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
|   |
| - 2 -<br>Supporting Declaration   |

I, James Whitfield, hereby declare:

| 1        | ,    |  |
|----------|------|--|
| 2        | 1.   | I have personal knowledge of the facts I state below, and if I were to be called as a        |
| 3        |      | witness, I could competently testify about what I have written in this declaration.          |
| 4        | 2.   | I am 67 years old, a Navy veteran and I served my country for 20 years, 3 months and 14      |
| 5        |      | days. As a result of my military service, I suffer from severe back, neck and leg pain.      |
| 6        | 3.   | Pharmaceutical drugs have not been at all useful in the repair or recovery of my painful     |
| 7        |      | conditions.  |
| 8<br>9   | 4.   | The one thing that does provide me with a great deal of relief is the regular use of         |
| 10       |      | organically grown medical cannabis which I began using rather than the opiates that had      |
| 11       |      | been prescribed to me. All the painkillers I was given were addictive and kept me from       |
| 12       |      | being able to maintain a solid and consistent coherency.                                     |
| 13       | 5.   | I have known Darryl Cotton and 151 Farms for nearly 20 years now. I support their ongoing    |
| 14       |      | efforts to educate others on the importance of having fresh food and cannabis available to   |
| 15       |      | those who seek it.   |
| 16       | 6.   | It has been extremely important for me to have access to fresh food and genetically specific |
| 17<br>18 |      | cannabis to help alleviate my pain and suffering. As such, cannabis remains an important     |
| 19       |      | lifeline for me on a daily basis.  |
| 20       | 7.   | I fully support Darryl Cotton and his efforts to promote laws, policies and regulations that |
| 21       |      | serve to protect patients' rights and access to medical-grade cannabis as a treatment for    |
| 22       |      | medical, physical and psychological conditions.  |
| 23       |      | I declare under penalty of perjury under the laws of the State of California that the        |
| 24       | £    |  |
| 25       | -    | ing is true and correct.   |
| 26<br>27 | DATE | D: 1/1 C / M D Mode 1  |
| 27       |      | V  |
|          |      | -1-  |
|          |      | Supporting Declaration   |

,

| 1      | I, Michael Scott McKim, hereby declare:  |
|--------|--|
| 2      | 1. I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration. |
| 3      | 2. I am a San Diego native.  |
| 4      | 3. I am a heavy equipment operator and have been a cannabis farmer for 20 years.   |
| 5      | 4. I have been the senior farm manager at many licensed mid-to-large cannabis farms in   |
| 6<br>7 | Northern California. As such, I have gained tremendous insight into the evolving business o  |
| 8      | cannabis as well as how the plant is grown and processed.  |
| 9      | 5. I left Northern California to look for likeminded farmers that value organically grown plants   |
| 0      | that would not potentially harm the medical cannabis patient as I became aware that the  |
| .1     |  |
| .2     | industry is becoming increasingly about making a profit and that plant quality and patients'   |
| 3      | needs are no longer priorities.  |
| .4     | 6. I was introduced to Darryl Cotton and 151 Farms in August 2017. I was so impressed with   |
| 5      | his passion, education and vision that I immediately offered to help him in any way I could.   |
| 16     | 7. Darryl has worked tirelessly in promoting these urban farms as a way to educate the   |
| 17     | community about the benefits of organically grown food, hops and medicine.   |
| 8      | 8. Darryl is a man of his word and he is driven by a sense of purpose that you rarely see in   |
| 9      | people. It is his vision to expand 151 Farms to larger markets that has given me a good  |
| 20     | sense of my own future opportunities.  |
| 22     | 9. I can see that Darryl is in a stressful legal battle with someone who apparently seeks to take  |
| 23     | advantage of Darryl by acquiring his property and benefitting from the notoriety that Darryl   |
| 24     | has created with 151 Farms in the urban farming community.   |
| 25     | 10. Recently Darryl has become extremely stressed out and not as available as he used to be.   |
| 26     | Clearly something must be done and I hope that there are legal mechanisms that can protect   |
| 27     | Darryl and those of us who share his passion and dreams.   |
| 28     |  |
| -      | - 1 -<br>Supporting Declaration  |

.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Mc/len DATED: <u>| - 20 - 18</u> Michael Scott McKim . . - 2 -Supporting Declaration 

I, Cheryl Morrow, hereby declare:

1

.

| 2        |             |  |
|----------|-------------|--|
|          | witnes      | I have personal knowledge of the facts I state below, and if I were to be called as a ss, I could competently testify about what I have written in this declaration. |
| 3<br>4   | 1.          | I am Editor-in-Chief of the San Diego Monitor News and have proudly been a consistent  |
| 5        |             | community supporter for 27 years. I have witnessed numerous valued activities with 151   |
| 6        |             | Farms personally and have become a strong advocate.  |
| 7        | 2.          | Since Darryl Cotton and 151 Farms have come to my awareness, I have frequented the farm  |
| 8        | 2<br>•<br>• | and have recommended the farm's usage to many San Diego residents with health issues. It   |
| 9        |             | only makes sense to support a system that gives alternatives of fresh food and environmental   |
| 10       |             | solutions as well as promoting health benefits to a community that has been ravaged by poor  |
| 11<br>12 |             | health options and poor food options. The public has grown dependent on our sound  |
| 13       |             | wellness options in pursuit of a healthier lifestyle and I have knowledge of these options as  |
| 14       |             | an urban garden advocate along with my many years in the cosmetics industry.   |
| 15       | 3.          | I have grown to trust Darryl Cotton with his superior knowledge on medical cannabis law  |
| 16       |             | and I respect his abiding by state and local government requirements. Ethically speaking, I  |
| 17       |             | feel that 151 Farms is the best model in the country and should be considered a model for all  |
| 18       |             | cannabis endeavors. Individuals who seek interest in this industry should seek out what  |
| 19<br>20 |             | Darryl Cotton has done with his undying courage and extremely time-consuming devotion.   |
| 21       | 4.          | I have seen many changes in growing techniques over the last few years and 151 Farms is  |
| 22       |             | the product of many farms that are adding value to their communities all over the world. I   |
| 23       |             | have seen people from abroad take tours of the farm who have been astounded by 151   |
| 24       |             | Farms' sophistication while delivering compassion for its patients.  |
| 25       | 5.          | It is obvious that the legal actions have taken a toll on Darryl's passion regarding the day to  |
| 26       |             | day operations of the farm. However, Darryl is a model citizen in my opinion. My entire  |
| 27<br>28 |             | family has great respect for those who roll up their sleeves to be a part of the solutions and   |
| 20       |             | - 1 -  |
|          |             | Supporting Declaration   |

|                              | 1 Farms is a community asset. I have gained a wealth of knowledge  |
|------------------------------|--|
| about my own health          | preservation, so in saying all of this God helps those who help    |
| themselves.                  |  |
| I declare under pena         | alty of perjury under the laws of the State of California that the |
| foregoing is true and correc | c <b>t</b> .   |
| DATED: <u>1-22-2018</u>      | /s/ Cheryl Morrow  |
|                              | Cheryl Morrow  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
|                              |  |
| L .                          |  |
| 5                            |  |
| 5                            |  |
| 7                            |  |
| 3                            |  |
|                              | - 2 -<br>Supporting Declaration                                    |

| 1<br>2<br>3<br>4 | Jacob P. Austin, SBN 290303<br>The Law Office of Jacob Austin<br>1455 Frazee Road, #500<br>San Diego, CA 92108<br>Telephone: 619.357.6850<br>Facsimile: 888.357.8501<br>JPA@JacobAustinEsq.com |   |
|------------------|--|---|
| 5<br>6           | Attorney for Defendant and Cross-Complainant Dar   |   |
| 7                | (Representation Limited to Motion to Expunge Li  | s Pendens)  |
| 8                | SUPERIOR COURT   | OF CALIFORNIA   |
| 9                | COUNTY OF SAN DIEGO  | - CENTRAL DIVISION  |
| 10               |  |   |
| 11               | LARRY GERACI, an individual,   | ) CASE NO. 37-2017-00010073-CU-BC-CTL   |
| 12               | Plaintiff,   | <i>EX PARTE</i> APPLICATION BY COTTON FOR   |
| 13               | VS.  | ORDERS: (1) SHORTENING TIME FOR<br>HEARING ON DARRYL COTTON'S MOTION                                |
| 14<br>15         | DARRYL COTTON, an individual; REBECCA<br>BERRY, an individual; and DOES 1-10, Inclusive,   | TO EXPUNGE NOTICE OF PENDENCY OF ACTION ( <i>LIS PENDENS</i> ) [CCP 405.30 et seq.];                |
| 16               | Defendants.  | AND (2) COMPELLING THE ATTENDANCE<br>AND TESTIMONY OF PLAINTIFF AND<br>CROSS-DEFENDANT LARRY GERACI |
| 17<br>18<br>19   | DARRYL COTTON, an individual,<br>Cross-Complainant,  | HEARING DATE: April 5, 2018<br>HEARING TIME: 8:30 a.m.<br>DEPT: C-73                                |
| 20               | VS.  | JUDGE: The Honorable Joel R. Wohlfeil   |
| 21               | LARRY GERACI, and individual, REBECCA  | COMPLAINT FILED: March 21, 2017<br>TRIAL DATE: May 11,2018  |
| 22               | BERRY, an individual; and DOES 1 through 10, Inclusive,  | )<br>) [IMAGED FILE]  |
| 23               | Cross-Defendants.  |   |
| 24               |  | )   |
| 25<br>26         |  |   |
| 20               |  |   |
| 28               |  |   |
|                  | 1  |   |
|                  | EX PARTE APPLICATION BY COTTON FOR ORDER: (1) SH<br>MOTION TO EXPUNGE NOTICE OF PENDENCY OF A<br>ATTENDANCE AND TESTIMONY OF PLAINTIF  | CTION ( <i>LIS PENDENS</i> ); AND (2) COMPELLING THE  |

### TO EACH PARTY AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on April 5, 2018 at 8:30 a.m. or as soon thereafter as the matter may be heard in Department C-73 of the above-entitled Court located at 330 West Broadway, San Diego, California 92101, Defendant/Cross-Complainant Darryl Cotton, by and through his counsel Jacob P. Austin, will appear and move this Court *ex parte* for an Order Shortening Time for the hearing on Darryl Cotton's Motion to Expunge Notice of Pendency of Action (Lis Pendens) (wherein Mr. Cotton will move for an order (i) expunging the *lis pendens* filed in the above-referenced action and recorded in the official records at Office of the Recorder of San Diego County as Instrument No. 2017-0129756 on March 22, 2017, and (ii) awarding Defendant/Cross-Complainant reasonable attorneys' fees and costs incurred in connection with this motion.); (2) compelling the attendance and testimony of Plaintiff and Cross-Defendant Larry Geraci;

The motion is made upon the grounds that, in light of the evidence presented by Plaintiff, the Complaint lacks "probable validity" which can be established by a preponderance of the evidence.

The motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, Declarations of Darryl Cotton, and Jacob P. Austin, and the Request for Judicial Notice served and filed herewith, the pleadings and records on file in this action, and upon such other and further oral and documentary evidence which may be presented at the hearing on this Motion.

Pursuant to California Rules of Court, rule 3.1202(a), so far as is known to moving party Cotton, the names, addresses, and telephone numbers of the attorneys and parties in this case are:

Michael R. Weinstein

San Diego, CA 92121

Fax: (619) 232-9316

Michael R. Weinstein

San Diego, CA 92121

Fax: (619) 232-9316

FERRIS & BRITTON. APC

Telephone: (619) 233-3131

FERRIS & BRITTON, APC

Telephone: (619) 233-3131

501 West Broadway, Suite 1450

501 West Broadway, Suite 1450

Parties

Attorneys

Larry Geraci

Rebecca Berry

1

2

3

4

5

2 EX PARTE APPLICATION BY COTTON FOR ORDER: (1) SHORTENING TIME FOR HEARING ON DARRYLCO MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (LIS PENDENS); AND (2) COMPELLING ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI

| 1  | Darryl Cotton Jacob P. Austin<br>(Depresentation Limited to Mation to European Lin Paradeus)  |
|----|---|
| 2  | (Representation Limited to Motion to Expunge Lis Pendens)<br>THE LAW OFFICE OF JACOB AUSTIN   |
| 3  | 1455 Frazee Road, #500<br>San Diego, CA 92108   |
| 4  | Telephone: (619) 357-6850<br>Fax: (888) 357-8501  |
| 5  |   |
| 6  | This Application is made pursuant to California Code of Civil Procedure section 2025.450 and  |
| 7  | California Rules of Court, Rules 3.1200 through 3.1207, and 2.5.11, and based upon this Application, the  |
| 8  | accompanying Memorandum of Points and Authorities, Declaration of Jacob P. Austin and Request for   |
| 9  | Judicial Notice in support hereof, the pleadings and records on file in this action, and upon such other  |
| 10 | and further oral and documentary evidence which may be presented at the hearing on this Motion. Timely  |
| 11 | notice for this Application was given by undersigned counsel to all parties to this action pursuant to  |
| 12 | California Rules of Court, rule 3.1203(a). (Declaration of Jacob P. Austin at ¶4.)  |
| 13 |   |
| 14 | DATED: April 4, 2018 THE LAW OFFICE OF JACOB AUSTIN   |
| 15 | 1 1 a b   |
| 16 | ByJACOB P. AUSTIN   |
| 17 | Attorney for Defendant and Cross-Complainant  |
| 18 | DARRYL COTTON<br>(Representation Limited to Motion to   |
| 19 | Expunge Lis Pendens)  |
| 20 |   |
| 21 |   |
| 22 |   |
| 23 |   |
| 24 |   |
| 25 |   |
| 26 |   |
| 27 |   |
| 28 |   |
|    | 3   |
|    | EX PARTE APPLICATION BY COTTON FOR ORDER: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S<br>MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION ( <i>LIS PENDENS</i> ); AND (2) COMPELLING THE<br>ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI |

| Jacob P. Austin, SBN 290303<br>The Law Office of Jacob Austin<br>1455 Frazee Road, #500<br>San Diego, CA 92108<br>Telephone: 619.357.6850<br>Facsimile: 888.357.8501<br>JPA@JacobAustinEsq.com |   |
|--|---|
| <b>Attorney for Defendant and Cross-Complainant</b><br>(Representation limited to Motion to Expunge <i>Lis P</i>   |   |
| SUPERIOR COURT   | T OF CALIFORNIA   |
| COUNTY OF SAN DIEG   | O – CENTRAL DIVISION  |
| LARRY GERACI, an individual,<br>Plaintiff,   | ) CASE NO. 37-2017-00010073-CU-BC-CTL   |
| vs.<br>DARRYL COTTON, an individual; REBECCA<br>BERRY, an individual; and DOES 1-10,<br>INCLUSIVE,<br>Defendants.  | <ul> <li>MEMORANDUM OF POINTS AND</li> <li>AUTHORITIES IN SUPPORT OF DARRYI</li> <li>COTTON'S <i>EX PARTE</i> APPLICATION FOI</li> <li>ORDERS: (1) SHORTENING TIME FOR</li> <li>HEARING ON DARRYL COTTON'S MOT</li> <li>TO EXPUNGE NOTICE OF PENDENCY O</li> <li>ACTION (<i>LIS PENDENS</i>); AND (2)</li> <li>COMPELLING THE ATTENDANCE AND</li> <li>TESTIMONY OF PLAINTIFF LARRY GER</li> </ul> |
| DARRYL COTTON, an individual,<br>Cross-Complainant,<br>vs.<br>LARRY GERACI, and individual, REBECCA  | )<br>) DATE: April 5, 2018<br>) TIME: 8:30 a.m.<br>) DEPT: C-73<br>] JUDGE: Honorable Joel R. Wohfeil   |
| BERRY, an individual; and DOES 1 THROUGH<br>10, INCLUSIVE,<br>Cross-Defendants.  |   |
|  |   |

Defendant and Cross-Complainant Darryl Cotton ("<u>Cotton</u>") respectfully requests this Court GRANT Cotton's *Ex-Parte* Application for Order (1) Shortening Time on Cotton's Motion to Expunge Notice of Pendency of Action (*Lis Pendens*) (the "<u>LP</u>"); and (2) to Compel the Attendance and Testimony of Larry Geraci pursuant to CCP §405.30 *et seq*.

### **INTRODUCTION**

Summarily, Plaintiff Larry Geraci ("<u>Geraci</u>") filed this action alleging Cotton is in breach of contract for the sale of Cotton's real property (the "<u>Property</u>") to Geraci. In his Complaint, pursuant to which the *LP* was filed, Geraci alleges the following four causes of action: (1) Breach of Contract ("<u>BOC</u>"); (2) Breach of the Covenant of Good Faith and Fair Dealing; (3) Specific Performance; and (4) Declaratory Relief. (RJN 3.) The primary cause of action is the BOC (with the other causes arising therefrom), which is predicated and supported solely on the allegation a document executed on November 2, 2106 is the final written agreement for the purchase of the Property by Geraci (the "<u>Receipt</u>"). As alleged by Geraci in his Complaint: "On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the purchase and sale of the [Property] *on the terms and conditions stated therein*."<sup>1</sup>

However, that day, when the Receipt was executed, Geraci emailed a scanned copy to Cotton at 3:11 PM. Cotton reviewed it and realized it could be misconstrued as being the "final written agreement" for his Property and that it did not contain material terms (*e.g.*, a 10% equity stake in a contemplated business).<sup>2</sup> Thus, at 6:55 PM later that same day, Cotton replied:

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the <u>10% equity position</u> in the dispensary was not language added into that document. I just want to make sure that we're <u>not</u> missing that language in any <u>final agreement</u> as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply. [DC Decl. Ex. 1, p.9 (emphasis added).]

At <u>9:13 p.m.</u>, Geraci replied: "*No no problem at all*" [*Id.* (emphasis added) (the "<u>Confirmation</u> <u>Email</u>").] Thus, on the same day that the Receipt was executed, Geraci himself confirmed unequivocally via email that the Receipt, a 3-sentence document, is not the <u>final agreement</u> for the Property. In March of 2017 Cotton found out that Geraci had fraudulently induced him into executing the Receipt and terminated the agreement with Geraci. Thereafter, Geraci filed this suit alleging the above. Cotton filed a Cross-Complaint

<sup>&</sup>lt;sup>1</sup> Request for Judicial Notice ("<u>RJN</u>") Exhibit ("<u>Ex</u>.") 2 (Complaint ("<u>Comp</u>.") ¶4. <sup>2</sup> Declaration of Darryl Cotton ("<u>DC Decl.</u>") ¶19.

to which Geraci demurred arguing the Statute of Frauds ("<u>SOF</u>") and/or the Parol Evidence Rule ("<u>PER</u>") should, *inter alia*, prevent the admission of the Confirmation Email. This Court properly denied Geraci's demurrer.

However, even assuming, *arguendo*, the Court had ruled otherwise in the first instance, Geraci's reliance on the SOF and the PER is misplaced. First, "The doctrine of estoppel to plead the statute of frauds may be applied where necessary to prevent either unconscionable injury or unjust enrichment." *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 27. Here, as described below, both unconscionable injury and unjust enrichment will occur if Geraci can misrepresent the Receipt as the final agreement for the Property. Second, the PER does not bar evidence of *fraudulent promises* at variance with terms of the writing: "[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud." *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n* (2013) 55 Cal.4th 1169, 1182 (quoting *Ferguson v. Koch* (1928) 204 Cal. 342, 347).<sup>3</sup>

Despite the fantastical appearance of this case, the facts are the facts and they make it clear that Geraci is mispresenting the Receipt as the final agreement for the Property. He filed this Complaint with no probable cause to procedurally justify the filing of the *LP* on the Property and, thus, achieved his goal of clouding title and preventing the sale of the Property to a *bona fide* third-party purchaser; every day that this meritless litigation continues in the judicial system is a miscarriage of justice. And "reinforce[s] an already too common perception that the quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal." *Neary v. Regents of Univ. of California*, 3 Cal. 4th 273, 287, 834 P.2d 119, 127–28 (1992). Geraci is wealthy (described more fully in the motion to expunge) - he has had at least two law firms and three senior attorneys representing him in this action. Cotton is facing severe financial hardship, especially as his only asset, the Property, is inaccessible as a source of capital because of the *lis pendens* filed against it. (DC Decl. ¶21.)

24 ///

<sup>&</sup>lt;sup>26</sup> <sup>3</sup> Notably, the California Supreme Court in *Riverisland* referenced *Tenzer*, *supra*, in reaching its holding: "*Tenzer* disapproved a 44–year–old line of cases to bring California law into accord with the Restatement Second of Torts, holding that a fraud action is not barred when the allegedly fraudulent promise is unenforceable under the statute of frauds. Considerations that were persuasive in *Tenzer* also support our conclusion here. The *Tenzer* court decided the Restatement view was better as a matter of policy. [Citation.] *It noted the principle that a rule intended to prevent fraud, in that case the statute of frauds,* 

should not be applied so as to facilitate fraud. [Citation.]" Riverisland, supra, at 1183 (emphasis added).

| 1  | DISCUSSION   |
|----|--|
| 2  | COUNSEL'S ETHICAL DILEMMA  |
| 3  | As a threshold issue, for the reasons described below, Counsel for Cotton respectfully requests this   |
| 4  | Court to please understand the incredibly awkward set of circumstances that necessitate this instant <i>ex-parte</i>   |
| 5  | motion and the description of the situation as believes it to be. Counsel believes he is ethically obligated to  |
|    | bring forth this motion in defense of his client to prevent immediate and unjustified irreparable harm.  |
| 6  | However, in advocating for his client, Counsel wants to be incredibly clear: he does not in any manner or  |
| 7  | form, directly or indirectly, intend to be disrespectful to this Court. Counsel is aware:  |
| 8  | An attorney's oath requires that he "discharge the duties of an attorney to the best of his  |
| 9  | knowledge and ability." (Bus. & Prof. Code, s 6067.) Among such duties, an attorney is required to "maintain the respect due to the courts of justice and judicial officers," to "employ         |
| 10 | such means only as are consistent with truth," and to "abstain from all offensive personality,   |
| 11 | and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged." (Bus. & Prof. Code, §6068,           |
| 12 | subds. (b), (d) and (f).)  |
| 13 | <i>Ramirez v. State Bar</i> (1980) 28 Cal.3d 402, 412 n12.   |
| 14 | Prior to specifically stating Counsel's ethical dilemma, Counsel notes the following, declared under   |
| 15 | penalty of perjury provided in his supporting declaration herewith:  |
| 16 | In preparation for representing Mr. Cotton on his Motion to Expunge the Notice of Action I   |
| 17 | have, <i>inter alia</i> , reviewed (i) <u>every filing</u> in both of Mr. Cotton's actions with Mr. Geraci (Case No. 37-2017-00010073-CU-BC-CTL) and the City of San Diego (37-2017-00037675-CU- |
| 18 | WM-CTL); (ii) <u>every document produced to and from Mr. Cotton via discovery; (iii) every</u><br><u>single email to and from Mr. Cotton's professional and personal email accounts between</u>  |
| 19 | October 1, 2016 and March 31, 2017; and (iv) <u>interviewed over 17 individuals</u> who were in constant written communications and/or working with Mr. Cotton on a daily basis during the       |
| 20 | same time period noted and which gave rise to the events leading and related to this action.   |
| 21 | [(The " <u>Review of All Evidence</u> ") (emphasis added).] <sup>4</sup>   |
| 22 | Based on his Review of All Evidence, Counsel believes that it is beyond any reasonable doubt to  |
| 23 | conclude that this action was brought and maintained without any probable cause. There are numerous  |
| 24 | evidentiary items disclosed in pleadings and via discovery, whose authenticity are undisputed by Geraci, that  |
| 25 | Counsel believes each of which should dispositively address the instant action in favor of Cotton (more fully  |
| 26 |  |
| 27 |  |
| 28 | <sup>4</sup> Declaration of Jacob P. Austin (" <u>JA Decl.</u> ") ¶3.  |

described in the motion to expunge the *LP*).<sup>5</sup> Cotton has, in his *pro se* filings, consistently alleged the same (albeit in an inconsistent manner, with his arguments being laced with emotional pleas and non-related facts) arguments and facts.<sup>6</sup> However, because this Court has not issued an Order specifically addressing, identifying or analyzing even one of the pieces of evidence that Counsel believes to be case-dispositive, it is not clear to Counsel, based on review of the record, why this Court has not been persuaded by Cotton's proffered evidence.

In the absence of knowing the reasoning for this Court's decisions, Counsel is left to rely on his review of the record and his understanding of applicable law. Simply and sincerely stated: Counsel finds it incomprehensible, to the point of almost disbelief, that this action has progressed to its current state. Thus, Counsel's ethical dilemma: he cannot reconcile what he believes to be, for the reasons described below, the following five facts:

1. This action was brought by Geraci without probable cause to procedurally justify the filing of the *LP* that was meant to (i) prevent the sale of Cotton's Property to a third-party and (ii) coerce Cotton into settling with Geraci regardless of the merits.

2. This Court has allowed this case to be maintained despite being presented with what Counsel believes to be undisputed and case-dispositive evidence that proves the lack of any probable cause for this action.

3. Based on his Review of All Evidence, counsel for Geraci, specifically Attorney Gina Austin ("<u>Austin</u>"), Scott Toothacre and Mr. Michael Weinstein ("<u>Weinstein</u>"), have acted unethically by, *inter alia*, filing and maintaining this action lacking any probable cause.

4. On January 25, 2018, at an oral hearing on a motion by Geraci to compel certain discovery requests from Cotton, this Court initiated the hearing by stating to Cotton that it was personally acquainted with counsel and did not believe that Austin and Weinstein would act in the unethical manner that Cotton had alleged in his opposition to that motion (DC Decl. ¶20.)

25 ///

<sup>6</sup> Id.

<sup>&</sup>lt;sup>5</sup> *See, generally*, RJN 6 (Cotton's opposition to motion to compel his responses to certain discovery requests in which he describes the litigation, its challenges from his perspective and in which he provides emails and texts with Geraci and supporting declarations from noteworthy individuals all of which unilaterally support his contentions).

5. This Court – based on Counsel's personal attendance of this Court's law and motion calendar on numerous occasions – is impartial, patient, fair, and seeks (when requested and possible) to balance the needs of litigants and counsel with the interests of the Court.

Again, Counsel cannot reconcile these facts. Counsel notes that Cotton has filed *pro se* a Complaint in the United States District Court, Southern District of California that is currently pending before The Honorable Gonzalo Curiel (Case No. 3:18-cv-00325). *That* federal action is stayed pending resolution of *this* action. Cotton has alleged causes of action against Geraci, Berry, Austin, Weinstein and Toothacre, and their respective law firms, Ferris & Britton and Austin Legal Group, for, *inter alia*, Civil Conspiracy and RICO. In his federal Complaint, Cotton alleges this Court is biased against him. One of the main foci in the action before Judge Curiel will be whether Geraci and his counsel had probable cause to bring forth and maintain this action.

In *Ramirez*, *supra*, an attorney was suspended for submitting a brief accusing a judge of bias. To be absolutely and unequivocally clear, Counsel does <u>not</u> believe and is <u>not</u> alleging this Court is biased against Cotton. However, Counsel respectfully notes that <u>if</u> he is correct in his conclusion regarding the lack of probable cause in this case, and based on his Review of All Evidence, then it can *appear* that this Court is biased against Cotton. Thus, restated, Counsel's ethical dilemma is that he *believes* this Court's maintenance of this action is not reasonable in light of the evidence it has been presented; but he neither believes this Court to be biased against Cotton nor that it would allow its alleged relationship with counsel for Geraci, even if true, to affect its impartiality.

Cotton, as described below and as consistently alleged in his *pro se* filed pleadings, believes this Court is under a misunderstanding of the undisputed and case-dispositive nature of some of the evidence which has been presented to it.<sup>7</sup> The testimony from numerous third-parties in attendance does prove that Cotton's former counsel did fail to raise the most material and case-dispositive piece of evidence in this action before this Court at oral hearing on December 7, 2017 on an *Ex Parte* Application for a Temporary Restraining Order.<sup>8</sup> However, Cotton's theory is not tenable because the same evidence has been presented to this Court on numerous other occasions by Cotton since then and the Court still has not been persuaded.

<sup>&</sup>lt;sup>7</sup> *See Id.* at p.5, ln.21 – p.11, ln.9. <sup>8</sup> *Id.* at p.36, ln.20 – p.37, ln.10.

Counsel has struggled intensely with how to approach this issue with the Court and reviewed numerous ethical opinions and cases. Ultimately, Counsel is relying on the following language from an oftencited case in numerous professional responsibility cases and treatises: The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously *within the bounds of the law* [citation]. It is the imperative duty of an attorney to

zealously *within the bounds of the law* [citation]. It is the imperative duty of an attorney to respectfully yield to the rulings of the court, *whether right or wrong* [citation]. "[I]f the ruling is adverse, it is not counsel's right to resist it or to insult the judge—his right is only respectfully to preserve his point for appeal." [*Hawk v. Superior Court* (1974) 42 Cal.App.3d 108, 126 (quoting *Sacher v. United States* (1952) 343 U.S. 1, 9, 72 S.Ct. 451, 455, 96 L.Ed. 717).]

A lawyer should comply promptly with all orders and directives of the court, but he has a duty to have the record reflect adverse rulings or judicial conduct which he considers prejudicial to his client's interests and he has a right to make respectful requests for reconsideration of adverse rulings. (Standard 7.1, ABA Standards-Defense Function.) [*Id.* at 130.]

Thus, Counsel respectfully requests that this Court please not misinterpret this motion as intending any disrespect, but that it please look at the evidence and arguments herein (and the Motion to Expunge which more fully lays out the facts and the supporting evidence) with new eyes. Counsel's review of the record reveals what this Court is surely already aware of – Cotton's filings contain numerous very improbable and/or unrelated allegations that make him appear to be paranoid and delusional.<sup>9</sup> With no disrespect intended to Cotton, in Counsel's opinion, his client does in fact have some beliefs which are not supported by reasonable evidence; however, <u>some</u> of Cotton's improbable allegations <u>are</u> supported by material, credible evidence. As unbelievable as it appears, this case, though originally brought forth as a breach of contract case, is really about fraud, deceit, extra-judicial coercion and intimidation tactics – there is credible, third-party evidence and testimony to support Cotton's Civil Conspiracy and RICO allegations in his federal complaint at least against Geraci.<sup>10</sup> Mr. Cotton was not a paranoid *pro se* litigant. At the very least, in this action, he is demonstrably a victim of a conspiracy meant to deprive him of his Property because, fortuitously as a result of the so-called "Green Rush" (cannabis industry boom) and its geographic location, it has recently become worth millions of dollars.<sup>11</sup>

Lastly, Counsel notes he is almost exclusively a criminal defense attorney and never has engaged in civil proceedings of the type at issue here. He is compelled to bring forth the instant *ex parte* motion seeking

1

2

3

4

5

6

7

8

<sup>&</sup>lt;sup>9</sup> See, generally, RJN 6.

<sup>&</sup>lt;sup>10</sup> JA Decl. ¶5.

<sup>&</sup>lt;sup>11</sup> RJN 6, pp. 182-196 (Martin Sale Agreement containing terms and consideration for Mr. Cotton's property that was originally for, *inter alia*, \$2,000,000 and a 20% equity stake in the contemplated business.

to shorten time and other relief because he has personally witnessed – and can attest to – the continuously increasing deterioration of Cotton's mental and physical well-being over the last several months as a result of this litigation. Because he believes this action lacks probable cause, the financial, emotional and psychological harm that Cotton has and continues to suffer is simply appalling. Counsel feels ethically compelled to bring forth this motion or risk irreparable harm to his client's physical and mental health. (*See* DC Decl. Ex. 4.)

Α.

### THE COURT MAY GRANT A MOTION TO SHORTEN TIME

Generally, a motion must be served at least sixteen court days before the hearing. (CCP §1005(B).
However, the Court may, in its discretion upon a showing of "good cause," shorten the time required for notice of motions. *Id.* As described herein, the Confirmation Email appears to dispositively prove that Geraci is mispresenting the Receipt as the final written agreement. Geraci has not provided any other evidence to support a finding of probable cause for his allegation that the Receipt is the final agreement for the Property.
"[P]robable cause requires evidence sufficient to prevail in the action or at least information reasonably warranting an inference there is such evidence.' [*Puryear v. Golden Bear* (1998) 66 Cal.App.4th 1188, 1195]. To put it another way, probable cause is lacking 'when a prospective plaintiff and counsel do not have evidence sufficient to uphold a favorable judgment or information affording an inference that such evidence can be obtained for trial.'" *Arcaro v. Silva & Silva Ent. Corp.* (1999) 77 Cal App.152, 156–157 (quoting *Puryear, supra,* at 1195). The only evidence ever put forth by Geraci to support his Complaint in almost a year is the Receipt and his own supporting declaration, neither of which provides "evidence sufficient to uphold a favorable judgment" or provides "information affording an inference that such evidence can be obtained for trial" considering Geraci's express representation to the contrary in the Confirmation Email. *Id.* Cotton underwent an Independent Psychiatric Assessment ("IPA") by Dr. Markus Ploesser. Per Dr.

Ploesser:

It is my professional opinion that Mr. Cotton currently meets criteria of Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and Major Depression (F32.2) . . . the level of emotional and physical distress faced by Mr. Cotton at this time is above and beyond the usual stress on any plaintiff being exposed to litigation. If causative triggers and threats against Mr. Cotton persist, there is a substantial likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental health. [DC Decl. Ex. 4, IPA ¶¶ 29, 32.] Thus, Cotton has shown good cause as it strongly appears Geraci has no probable cause for this action

and Cotton is, understandably, under intense psychological pressure as the victim of a conspiracy to deprive him of his Property via the judiciary system.

# B. <u>THE COURT IS SPECIFICALLY EMPOWERED TO COMPEL THE ATTENDANCE</u> <u>AND TESTIMONY OF LARRY GERACI</u>

As stated by the California Supreme Court, "[T]he lis pendens procedure [is] susceptible to serious abuse, providing unscrupulous plaintiffs with a powerful lever to force the settlement of groundless or malicious suits." *Malcolm v. Superior Court* (1981) 29 Cal.3d 518, 524. "Once a lis pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is resolved or the lis pendens is expunged." *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952, 967. "Because of the potential for abuse and injustice to the property owner, the Legislature has provided statutory procedures (CCP §405.30 *et seq.*) by which a lis pendens may be removed ('expunged')." Weil & Brown, Cal. Practice Guide, *Civ. Pro. Before Trial* (The Rutter Group 2017) ("<u>Rutter Guide</u>") ¶9:422 (*citing Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529). "[T]he lis pendens procedure provides a means by which a court may dispose of meritless real estate claims at the *preliminary stage of a case*." *Shah, supra*, at 529 (emphasis added).

CCP §405.30 *et seq.* was enacted to <u>require</u> proactive action by the trial court in the form of a "minitrial" on the merits in the *preliminary stage of a case*. As explained by the Court in *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, in analyzing the Legislature's intent in revising the *LP* laws in 1992 and enacting CCP §405.32:

The financial pressure created by a recorded lis pendens provided the opportunity for abuse, permitting parties with meritless cases to use it as a bullying tactic to extract unfair settlements. [¶] The Code Comment thus states that section 405.32 "is intended to disapprove *Malcolm*... and other cases which have held that the court on a motion to expunge may not conduct a 'minitrial' on the merits of the case. *This section is intended to change California law and to require judicial evaluation of the merits*." (Code Com., 14A West's Ann. Code Civ. Proc., foll. §405.32, par. 3, p. 346, italics added.)

Amalgamated, supra, at 1012 (emphasis in original).

In *Hilberg v. Superior Court* (1989) 215 Cal.App.3d 539, 542, the Court stated: "We cannot ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made not to prevent conveyance of property that is the subject of the lawsuit, but to coerce an opponent to settle regardless of the merits." (*Citing Malcolm, supra,* at 678.)

CCP §405.30 provides, in relevant part, as follows:

At any time after notice of pendency of action has been recorded, any party . . . may apply to the court in which the action is pending to expunge the notice . . . Evidence or declarations may be filed with the motion to expunge the notice. *The court may permit evidence to be received in the form of oral testimony, and may make any orders it deems just to provide for discovery by any party affected by a motion to expunge the notice*. [Emphasis added.]

"If conflicting evidence is presented, the judge must weigh the evidence in deciding whether plaintiff has sustained its burden." Rutter Guide §9:436.2. Materially summarized, Geraci and Cotton are in accord that on November 2, 2016: (i) an agreement was reached for the sale of the Property, and (ii) a document was executed by both parties on that day. However, the parties dispute what that executed document is. Cotton alleges the document, the Receipt, is just a "receipt" meant to memorialize his receipt of \$10,000. Geraci, on the other hand, alleges the Receipt is the "final written agreement" for his purchase of the Property and that Cotton is lying about being entitled to, *inter alia*, a 10% equity stake in the Property – a term not contained in the Receipt. Thus, the primary and case-dispositive issue in this action is a determination of whether the Receipt is a "receipt" as Cotton alleges or a "final agreement" for the Property as Geraci alleges. The evidence appears to be dispositively clear – Geraci is fraudulently misrepresenting the Receipt as a final agreement.

Geraci brought forth this suit alleging the Receipt is the final agreement. He also confirmed that the Receipt is not the final agreement in the Confirmation Email and continued to string Cotton along for months with drafts of contracts based on their agreed upon terms. CCP §405.30 *et. seq.*, was specifically enacted for this scenario – "The court may permit evidence to be received in the form of oral testimony, and *may make any orders it deems just to provide for discovery* by any party affected by a motion to expunge the notice." *Id. (emphasis added)*. Additionally, "A court has inherent equity, supervisory and administrative powers, as well as inherent power to control litigation and conserve judicial resources. Courts can conduct hearings and formulate rules of procedure *where justice so demands*." *Lucas v. County of Los Angeles* (1996) 47 Cal.App.4th 277, 284–85 (internal citation omitted; emphasis added).

Here, although the action is framed as a breach of contract cause of action, this case is really about fraud and deceit. And one of the parties is making false representations to this Court. The Court should exercise its power, discover which party is attempting to manipulate the judicial system and sanction them accordingly. To this end, the Court should order the attendance and testimony of Larry Geraci. If Cotton is correct, the fact that the judiciary has been used as a tool of oppression represents an issue of great public concern, on these facts, this is not just a dispute between Geraci and Cotton.

### IV. <u>CONCLUSION</u>

Ultimately, Cotton is not requesting that the Court dismiss this action in his favor via this *ex-parte* motion. And, neither is Counsel for Cotton closed to the possibility that evidence and arguments have been made at *ex-parte* hearings which are not in the record or, perhaps, there is a construct of civil law applicable

here with which he is not familiar. Thus, respectfully requested, Cotton asks that this Court recognize his *pro se* status and his inability to have previously researched, prepared and submitted the attached Motion to Expunge Notice of Pendency of Action (*Lis Pendens*) while under the pressure of the instant litigation. Because of the evidence presented herein, the most reasonable conclusion is that Geraci is fraudulently misrepresenting the Receipt and this action is unjust.

Consequently, this Court should exercise its power and grant the relief requested herein to determine if Geraci and/or his counsel have sought to manipulate the judicial system to effectuate a miscarriage of justice. If Cotton is incorrect, Geraci suffers no harm or damage from having this motion granted. However, if Geraci cannot produce evidence other than the Receipt and his self-serving testimony and actions, then every day which passes is unconscionably causing Cotton ongoing financial and psychological harm.

Alternatively, should the Court decide to deny the relief requested herein, Cotton respectfully requests that this Court settle a legal dispute between Weinstein and Counsel for Cotton. This Court granted Geraci's request for a mandatory injunction. Cotton has communicated his intent to file a Notice of Appeal (NOA) and believes that upon its filing, this action will be automatically stayed while the Court of Appeals reviews the appeal. Weinstein has objected, arguing that Cotton must first file a *noticed* motion for a stay with this Court before a filed NOA will *automatically* stay this action. Cotton provided Weinstein case law explicitly stating that a noticed motion is not required if the trial court has already communicated its intention to deny the request, as is the case here.<sup>12</sup> Weinstein did not provide legal authority in opposition for his statement that, if Cotton files an NOA, this case will not be automatically stayed. Should the Court deny this request, Cotton would like to immediately file an NOA to prevent agents of Geraci from having access to, and intruding upon, his Property – the location where he has built his businesses and worked for over 20 years.

DATED:

April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

By

JACOB P. AUSTIN Attorney for Defendant and Cross-Complainant DARRYL COTTON

<sup>12</sup> See Sun-Maid Raisin Growers of Cal. v. Paul (1964) 229 Cal.App.2d 368, 374 (A third objection to the proceeding in this court was that the appellants had not first exhausted their right to seek a stay of proceedings in the lower court by failing to show a preliminary application to that end. [Citation.] In this latter connection, the attorney for defendants testified that he had informed the trial judge that he intended to ask him for a stay of proceedings after the entry of the preliminary injunction, but the trial judge told him that he would not grant it. The law does not require a useless act.")

|  |                                 | 100-000210000                                       |
|--|---------------------------------|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO | ):                              | FOR COURT USE ONLY                                  |
| NAME: JACOB P. AUSTIN [SBN 290303]               |                                 | ELECTRONICALLY FILED                                |
| FIRM NAME: The Law Office of Jacob Austin        |                                 | Superior Court of California,                       |
| STREET ADDRESS: 1455 Frazee Road, #500           |                                 | County of San Diego                                 |
| נודץ: San Diego                                  | STATE: CA ZIP CODE: 92108       | 04/05/2018 at 08:27:00 AM                           |
| TELEPHONE NO.: (619) 357-6850                    | FAX NO.: (888) 357-8501         |   |
| E-MAIL ADDRESS: JPA@JacobAustinEsq.com           |                                 | Clerk of the Superior Court                         |
| ATTORNEY FOR (name): Defendant/X-Complainant D   | ARRYL COTTON (Ltd Scope of Rep) | By ∨anessa Bahena,Deputy Clerk                      |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF          | SAN DIEGO                       |   |
| STREET ADDRESS: 330 West Broadway                |                                 |   |
| MAILING ADDRESS: 330 West Broadway               |                                 |   |
| CITY AND ZIP CODE: San Diego, CA 92101-2994      |                                 |   |
| BRANCH NAME: Central Division - Civil            |                                 | CASE NUMBER:  |
|  |                                 | 37-2017-0010073-CU-BC-CTL                           |
| PLAINTIFF/PETITIONER: LARRY GERACI               |                                 |   |
| DEFENDANT/RESPONDENT: DARRYL COTTO               | N, et al.                       | JUDICIAL OFFICER:<br>The Honorable Joel R. Wholfeil |
|  |                                 |   |
|  |                                 | DEPARTMENT:   |
| PROOF OF ELECTR                                  | CONIC SERVICE                   | C-73  |
|  |                                 |   |
|  |                                 |   |

- 1. I am at least 18 years old.
  - My residence or business address is (specify): 1510 Front Street San Diego, CA 92101
  - b. My electronic service address is (specify): ServeThePapersFast@gmail.com
- 2. I electronically served the following documents (exact titles):

**x** The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

- 3. I electronically served the documents listed in 2 as follows:
  - a. Name of person served: Michael R. Weinstein

On behalf of (name or names of parties represented, if person served is an attorney): Plaintiff LARRY GERACI and Cross-Defendant REBECCA BERRY

- b. Electronic service address of person served : mweinstein@ferrisbritton.com
- c. On (date): April 4, 2018

**x** The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. (Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: April 4, 2018

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ZOE KERSEY

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

PROOF OF ELECTRONIC SERVICE (Proof of Service/Electronic Filing and Service)



### ATTACHMENT TO PROOF OF ELECTRONIC SERVICE

#### **Documents Served**:

- 1. *EX PARTE* APPLICATION BY COTTON FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) [CCP 405.30 et seq.]; AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI
- 2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF LARRY GERACI;
- 3. DECLARATION OF JACOB P. AUSTIN IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF LARRY GERACI;
- 4. NOTICE OF MOTION AND MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
- 5. DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
- 6. DARRYL COTTON'S DECLARATION IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
- 7. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF: DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); <u>AND</u> EX PARTE APPLICATION BY COTTON FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) [CCP 405.30 et seq.]; AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI
- 8. [PROPOSED] ORDER EXPUNGING NOTICE OF PENDENCY OF ACTION AND AWARDING ATTORNEYS' FEES AND COSTS TO DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON;
- 9. SUBSTITUTION OF ATTORNEY CIVIL (Without Court Order); and
- 10. NOTICE OF LIMINTED SCOPE OF REPRESENTATION

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO CENTRAL

# **MINUTE ORDER**

DATE: 04/05/2018

TIME: 08:30:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil CLERK: Andrea Taylor REPORTER/ERM: BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017 CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged] CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

# EVENT TYPE: Ex Parte

### APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal,Cross - Defendant,Cross -Complainant,Plaintiff(s). Scott H Toothacre, counsel, present for Respondent on Appeal,Cross - Defendant,Cross -Complainant,Plaintiff(s). Darryl Cotton, self represented Defendant, present. Attorney Jacob Austin specially appears on behalf of Darry Cotton.

Ex-parte application for order shortening time for hearing on motion to expunge notice of pendencey of action and compel attendance and testimony of Plaintiff requested by Defendant.

Court finds good cause to grant in part. Court will allow order shortening time to hear motion on 4/13/18. Plaintiff is granted leave to file opposition papers by noon on 4/10/18. No reply.

All other requests are denied without prejudice.

Attorney Austin's oral request to stay case due to appeal is denied.

Attorney Austin to give notice of ruling.

| 1<br>2<br>3<br>4<br>5<br>6<br>7 | FERRIS & BRITTON<br>A Professional Corporation<br>Michael R. Weinstein (SBN 106464)<br>Scott H. Toothacre (SBN 146530)<br>501 West Broadway, Suite 1450<br>San Diego, California 92101<br>Telephone: (619) 233-3131<br>Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com<br>stoothacre@ferrisbritton.com<br>Attorneys for Plaintiff/Cross-Defendant LARRY GE<br>Cross-Defendant REBECCA BERRY | RACI and                               |                                      |
|---------------------------------|---|--|--------------------------------------|
| 8                               | SUPERIOR COURT  | OF CALIFORNIA                          |                                      |
| 9                               | COUNTY OF SAN DIEGO   | D, CENTRAL DIVIS                       | SION                                 |
| 10                              | LARRY GERACI, an individual,  | Case No. 37-2017-                      | 00010073-CU-BC-CTL                   |
| 11                              | Plaintiff,  | Judge:<br>Dept.:                       | Hon. Joel R. Wohlfeil<br>C-73        |
| 12                              | V.  | PLAINTIFF LAF                          |                                      |
| 13                              | DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,   | MEMORANDUN<br>AUTHORITIES              | 1 OF POINTS AND<br>IN OPPOSITION TO  |
| 14<br>15                        | Defendants.   |  | ARRYL COTTON'S<br>IPUNGE LIS PENDENS |
| 16                              | DARRYL COTTON, an individual,   | [IMAGED FILE]                          |                                      |
| 17                              | Cross-Complainant,  | Hearing Date:<br>Hearing Time:         | April 13, 2018<br>9:00 a.m.          |
| 18                              | V.  | Filed:<br>Trial Date:                  | March 21, 2017<br>May 11, 2018       |
| 19<br>20                        | LARRY GERACI, an individual, REBECCA<br>BERRY, an individual, and DOES 1<br>THROUGH 10, INCLUSIVE,  | mar Date.                              | Way 11, 2018                         |
| 21                              | Cross-Defendants.   |  |                                      |
| 22                              |   | ]                                      |                                      |
| 23                              |   |  |                                      |
| 24                              |   |  |                                      |
| 25                              |   |  |                                      |
| 26                              |   |  |                                      |
| 27                              |   |  |                                      |
| 28                              | -   |  |                                      |
|                                 | 1<br>PLAINTIFF LARRY GERACI'S MEMORANDUM OI<br>DEFENDANT DARRYL COTTON'S M  | F POINTS AND AUTHO<br>OTION TO EXPUNGE | DRITIES IN OPPOSITION 48             |
|                                 |   |  |                                      |

Π

| 1        |      | TABLE OF CONTENTS  |   |
|----------|------|--|---|
| 2        |      | Pag  | e |
| 3        | I.   | INTRODUCTION   | 4 |
| 4        | II.  | LEGAL PRINCIPLES   | 5 |
| 5        | III. | FACTUAL BACKGROUND   | 5 |
| 6        | IV.  | GERACI HAS ESTABLISHED THE PROBABLE VALIDITY OF HIS CLAIMS1  | 3 |
| 7        | V.   | CONCLUSION1  | 5 |
| 8<br>9   |      |  |   |
| 9        |      |  |   |
| 11       |      |  |   |
| 12       |      |  |   |
| 13       |      |  |   |
| 14       |      |  |   |
| 15       |      |  |   |
| 16       |      |  |   |
| 17       |      |  |   |
| 18       |      |  |   |
| 19<br>20 |      |  |   |
| 20       |      |  |   |
| 22       |      |  |   |
| 23       |      |  |   |
| 24       |      |  |   |
| 25       |      |  |   |
| 26       |      |  |   |
| 27       |      |  |   |
| 28       |      |  |   |
|          |      | <sup>2</sup> <u>112</u>  | ) |
|          | PL.  | AINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION <b>to</b><br>DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS |   |
|          |      |  |   |

| TABLE OF AUTHORITIES         Page         Cases         Blackburn v. Charnley       13         (2004) 117 Cal.App.4th 758       13         Castro v. Superior Court |
|---|
| Cases<br>Blackburn v. Charnley<br>(2004) 117 Cal.App.4th 758  |
| (2004) 117 Cal.App.4th 758  |
| (2004) 117 Cal.App.4th 758  |
| Castro v. Superior Court  |
|   |
| (2004) 116 Cal.App.4th 1010   |
| Hilberg v. Superior Court<br>(1989) 215 Cal.App.3d 5394   |
| Howard S. Wright Cons. Co. v. Superior Court  |
| (2003) 106 Cal.App.4th 314  |
| Mason v. Superior Court<br>(1985) 163 Cal.App.3d 9894   |
|   |
| Palmer v. Zaklama           (2003) 109 Cal.App.4th 1367   |
| Real Estate Analytics, LLC v. Vallas  |
| (2008) 160 Cal.App.4th 463  |
|   |
| Statutes  |
| Code Civ. Proc., § 1062.5   |
| Code Civ. Proc., § 405.3  |
| Code Civ. Proc., § 405.304, 5   |
| Code Civ. Proc., § 405.31   |
| Code Civ. Proc., § 405.32   |
|   |
|   |
|   |
|   |
|   |
| 3 1120  |
| PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION FOUND DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS                           |
|   |

Plaintiff and Cross-Defendant, LARRY GERACI ("Geraci"), submits these points and authorities in opposition to the motion by Defendant and Cross-Complainant, DARRYL COTTON ("Cotton"), to expunge the *lis pendens* recorded more than one year ago at the outset of this action.

### **INTRODUCTION**

I.

After having failed to comply with this court's prior orders directing Mr. Cotton to submit to his deposition and to respond to written discovery requests, Cotton moves this Court, on 8 days' notice, to expunge the *lis pendens*. Cotton's refusal to participate in discovery has substantially prejudiced Geraci and Berry in preparation of this case. Code of Civil Procedure, section 405.30, provides: "The court . . . may make any orders it deems just to provide for discovery by any party affected by a motion to expunge the notice." The court should continue this hearing until after Cotton submits to his deposition and answers the written discovery.

Despite the lack of discovery, based on the documentary evidence and the declarations of Geraci and Abhay Schweitzer, Geraci has met his burden of establishing the probable validity of the real property claims for: (1) specific performance; and (2) declaratory relief.<sup>1</sup>

The simple matter is that Geraci and Cotton had an agreement for the purchase and sale of real property that they reduced to writing and signed before a Notary Public. That contract, which expressly states all the terms necessary for enforceability, is valid and binding on the parties and supports causes of action for specific performance and declaratory relief. That Cotton has subsequently found a buyer willing to pay \$1.2 million above Geraci's purchase price is certainly motive for Mr. Cotton to attempt to wiggle out of his commitment, but it is not a legal defense to Geraci's specific performance, declaratory relief, or contract claims. Moreover, Geraci's willingness to discuss other proposals from Mr. Cotton over the ensuing several months in an attempt to appease Cotton who was threatening to interfere with the contract is not evidence that the November 2, 2016 written agreement (hereafter,

PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

<sup>&</sup>lt;sup>1</sup> The only claims Geraci has brought which "affect title or possession" of real property for *lis pendens* purposes are his claims for (1) specific performance, and (2) declaratory relief. A buyer's suit to compel specific performance of a contract for sale of real property affects title or possession of real property. (*Hilberg v. Superior Court* (1989) 215 Cal.App.3d 539, 542.) A suit for declaratory relief as to rights in real property affects title or possession to real property. (*Mason v. Superior Court* (1985) 163 Cal.App.3d 989, 996.) Geraci's claims for breach of contract and breach of the covenant of good faith and fair dealing do not "affect title or possession" of real property for *lis pendens* purposes. Therefore, although Geraci has established a probable validity of prevailing on those claims, they need not be addressed in this opposition to Cotton's motion to expunge the *lis pendens*.

"Nov 2nd Written Agreement") is anything other than a valid, binding, enforceable contract. None of the negotiations or proposals after the Nov 2nd Written Agreement ever came to fruition; the parties simply could not agree on different or additional terms which were mutually satisfactory to both parties.

### II. <u>LEGAL PRINCIPLES</u>

Parties and nonparties with an interest in the real property affected by a notice of pendency may apply to the court in which the action is pending to expunge the *lis pendens*. (Code Civ. Proc., § 405.30.) Courts "shall order the notice expunged if the court finds that the pleading on which the notice is based does not contain a real property claim." (Code Civ. Proc., § 405.31.) Further, even where the plaintiff properly pleads a real property claim, the *lis pendens* must be expunged if the real property claim lacks evidentiary merit. (*Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1377-1378.) Code of Civil Procedure, section 405.32 states "the court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the 'probable validity' of the real property claim."

Thus, a *lis pendens* must be ordered expunged if it is improper because (a) the pleading on which it is based does not contain a "real property claim," (Code Civ. Proc., § 405.31) or (b) the party who recorded the *lis pendens* cannot establish the "probably validity" of the real property claim by a preponderance of the evidence (Code Civ. Proc., § 405.32). (See *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1017.) "Probable validity" of the claim for purposes of avoiding expungement means that it is more likely than not that the party who asserted the real property claim will obtain a judgment on the claim in his or her favor. (Code Civ. Proc., § 405.3; *Howard S. Wright Cons. Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 319 fn. 5.) Although the defendant is the moving party, the burden is on the plaintiff/claimant opposing the expungement motion to establish the probable validity of the underlying real property claim by a preponderance of the evidence. (Code Civ. Proc., § 405.32, *Howard S. Wright Cons. Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 319 fn. 5.) Although the defendant is the moving party, the burden is on the plaintiff/claimant opposing the expungement motion to establish the probable validity of the underlying real property claim by a preponderance of the evidence. (Code Civ. Proc., § 405.32, *Howard S. Wright Const. Co. v. Superior Court*, supra, 106 Cal.App.4th at p. 319.)

### III. FACTUAL BACKGROUND

In approximately September of 2015, Geraci began lining up a team to assist in his efforts to develop and operate a Medical Marijuana Consumer Cooperative ("MMCC") business (a.k.a. a medical

marijuana dispensary) in San Diego County. At that time, he had not yet identified a property for the 2 MMCC business. He hired a consultant to help locate and identify potential property sites for the business. He hired a design professional, Abhay Schweitzer of TECHNE. He hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. In addition, he hired a land use attorney, Gina Austin of Austin Legal Group. (Geraci Decl. ¶ 2.)

The search to identify potential locations for the business was lengthy due to the restrictions and requirements to satisfy in order to comply with various ordinances. In approximately June 2016, the consultant told Geraci he had found a potential site for acquisition and development for use and operation as an MMCC. The site was located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property"). The consultant put Mr. Geraci in contact with Mr. Cotton (who owned the property), and Mr. Geraci expressed his interest to Mr. Cotton in acquiring his Property if further investigation satisfied him that the Property might meet the requirements for a MMCC site. (Geraci Decl. ¶ 3.)

Mr. Geraci, through his consultants, spent months investigating issues related to whether the location might meet the requirements for a MMCC site. Although many issues were not resolved to a certainty, Mr. Geraci determined that he was still interested in acquiring the Property. (Geraci Decl. ¶4.)

Thereafter, Mr. Geraci approached Mr. Cotton to discuss the possibility of purchasing the Specifically, Mr. Geraci was interested in purchasing the Property from Mr. Cotton Property. contingent upon Mr. Geraci's obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, Mr. Geraci was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if he did not obtain CUP approval then he would not close the purchase and he would lose his investment. (Geraci Decl. ¶ 5; Exh. 2 to the Notice of Lodgment in Support of Plaintiff Larry Geraci's Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens (hereafter, "Geraci NOL").)

Mr. Cotton was willing to make the purchase and sale conditional upon CUP approval because if the condition were satisfied he would be receiving a much higher price than the Property's value in the absence of its approval for use as a medical marijuana dispensary. Mr. Geraci and Mr. Cotton

6

1

PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSI **DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS** 

| 1        | agreed on a down payment of \$10,000.00 and a purchase price of \$800,000.00. On November 2, 2016,  |  |  |  |  |  |
|----------|---|--|--|--|--|--|
| 2        | Mr. Cotton and Mr. Geraci executed a written purchase and sale agreement before a Notary Public for   |  |  |  |  |  |
| 3        | the purchase of the Property by Geraci from Cotton on the terms and conditions stated in the written  |  |  |  |  |  |
| 4        | agreement (hereafter the "Nov 2nd Written Agreement"). Geraci tendered the \$10,000 deposit to  |  |  |  |  |  |
| 5        | Mr. Cotton as acknowledged in the Nov 2nd Written Agreement. (Geraci Decl. ¶ 5)   |  |  |  |  |  |
| 6        | In paragraph 5 of his supporting declaration, Darryl Cotton states:   |  |  |  |  |  |
| 7<br>8   | "On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the " <u>November Agreement</u> ").    |  |  |  |  |  |
| 9        | The November Agreement consisted of the following: If the CUP was <u>approved</u> ,<br>then Geraci would, inter alia, provide me: (i) a total purchase price of \$800,000;<br>(ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity         |  |  |  |  |  |
| 10<br>11 | distribution of \$10,000. If the CUP was <u>denied</u> , I would keep an agreed upon<br>\$50,000 non-refundable deposit ("NRD") and the transaction would not close. In<br>other words, the issuance of a CUP at the Property was a condition precedent for |  |  |  |  |  |
| 12       | closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the \$50,000 NRD."   |  |  |  |  |  |
| 13       | Mr. Cotton and Mr. Geraci did meet at Mr. Geraci's office on November 2, 2016, to negotiate   |  |  |  |  |  |
| 14       | the final terms of the sale of the Property and they reached an agreement on the final terms of the sale  |  |  |  |  |  |
| 15       | of the Property. That agreement was not oral. The parties put their agreement in writing in a simple  |  |  |  |  |  |
| 16       | and straightforward written agreement that they both signed before a Notary Public. (See Nov 2nd  |  |  |  |  |  |
| 17       | Written Agreement, Exh. 2 to Geraci NOL; Geraci Decl. ¶ 6.)   |  |  |  |  |  |
| 18       | The Nov 2nd Written Agreement states in its entirety:   |  |  |  |  |  |
| 19       | 11/02/2016  |  |  |  |  |  |
| 20       | Agreement between Larry Geraci or assignee and Darryl Cotton:   |  |  |  |  |  |
| 21<br>22 | Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd.,<br>CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a<br>Marijuana Dispensary. (CUP for a dispensary.)   |  |  |  |  |  |
| 23       | Ten Thousand dollars (cash) has been given in good faith earnest money to   |  |  |  |  |  |
| 24       | be applied to the sales price of \$800,000.00 and to remain in effect until the license is approved. Darryl Cotton has agreed to not enter into any other   |  |  |  |  |  |
| 25       | contacts [sic] on this property.  |  |  |  |  |  |
| 26       | /s/<br>Larry Geraci /s/<br>Darryl Cotton  |  |  |  |  |  |
| 27       | (Geraci Decl. ¶ 6)  |  |  |  |  |  |
| 28       | Mr. Geraci never agreed to pay Mr. Cotton a $$50,000.00$ non-refundable deposit. At the 7   |  |  |  |  |  |
|          | PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO<br>DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS   |  |  |  |  |  |

meeting, Mr. Cotton stated he would like a \$50,000 non-refundable deposit. Mr. Geraci said "no." Mr. Cotton then asked for a \$10,000 non-refundable deposit, Mr. Geraci agreed, and that amount was put into the written agreement. After he signed the written agreement, Mr. Geraci paid Mr. Cotton the \$10,000 cash as agreed. Had Mr. Geraci agreed to pay Mr. Cotton a \$50,000 deposit, it would have been a very simple thing to change "\$10,000" to \$50,000" in the agreement before the parties signed it. (Geraci Decl.  $\P$  6.)

Mr. Geraci also never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary or to pay Mr. Cotton a minimum monthly equity distribution of \$10,000 as contended by Mr. Cotton. If Mr. Geraci had agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution of \$10,000, then it would have also been a simple thing to add a sentence or two to the agreement to say so. (Geraci Decl.  $\P$  6.)

What Mr. Geraci did agree to was to pay Mr. Cotton a total purchase price of \$800,000, with the balance of \$790,000 due upon approval of a CUP. If the CUP was not approved, then Mr. Cotton would keep the Property and the \$10,000; and that is how the agreement was written. (Geraci Decl.  $\P$  6.)

Mr. Cotton refers to the Nov 2nd Written Agreement as a "Receipt." Calling the signed written agreement a "Receipt" was never discussed. There would have been no need for a written agreement signed before a Notary Public simply to document Geraci's payment to Cotton of a \$10,000 down payment. In addition, had the intention been merely to document a written "Receipt" for the \$10,000 payment, then the parties would have identified on the document that it was a "Receipt" and there would have been no need to put in all the material terms and conditions of the deal. Instead, the document is expressly called an "Agreement" because that is what the parties intended. (Geraci Decl.  $\P$  7.)

As for Mr. Cotton's assertions regarding Gina Austin, Mr. Geraci did not promise to have attorney Gina Austin reduce the oral agreement to written agreements for execution. Instead, Mr. Cotton wanted to categorize or allocate the \$800,000 into two different payments. At Mr. Cotton's request, Mr. Geraci agreed to pay him for the property into two parts: \$400,000 as payment for the property and \$400,000 as payment for the relocation of his business. As this would benefit Cotton for

tax purposes but would not affect the total purchase price or any other terms and conditions of the purchase, Mr. Geraci stated a willingness to later amend the agreement in that way. (Geraci Decl.  $\P$  7.)

Prior to entering into the Nov 2nd Written Agreement, the parties discussed the CUP application and approval process and that Cotton's consent as property owner would be needed to submit with the CUP application. Mr. Geraci specifically advised Mr. Cotton that his assistant, Rebecca Berry, would act as his authorized agent to apply for the CUP on his behalf. Mr. Cotton agreed to Ms. Berry serving as the applicant on Mr. Geraci's behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement, for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed Rebecca Berry, who was serving as the CUP applicant on Mr. Geraci's behalf. Mr. Cotton provided consent and authorization as the parties had discussed that approval of a CUP would be a condition of the purchase and sale of the Property. (Geraci Decl. ¶ 8; Ownership Disclosure Statement signed October 31, 2016, Exh. 1 to Geraci NOL.)<sup>2</sup>

As noted above, Mr. Cotton had already put together a team for the MMCC project. The design professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of the Project and the CUP application and approval process. Mr. Schweitzer was responsible for coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San Diego in connection with the CUP application approval process. Mr. Schweitzer's declaration (Declaration of Abhay Schweitzer in Support of Plaintiff Larry Geraci's Opposition to Motion to

<sup>&</sup>lt;sup>2</sup> Cotton has asserted from the outset of his lawsuit and, again, in paragraph 16 of his supporting declaration, that he did not discover until March 16, 2017, that Geraci had submitted the CUP Application back on October 31, 2016. That assertion is false and is belied by a November 16, 2016, text message Cotton sent to Geraci in which he asked Geraci, "Did they accept the CUP application?" Cotton was well aware at that time that Geraci (via Berry) submitted a CUP application and was awaiting the City's completion of its initial review of the completeness of the application. Until the City deems the CUP application complete it does not proceed to the next step—the review of the CUP application. Geraci kept Cotton apprised of the status of the CUP application and the problems being encountered (e.g., an initial zoning issue) from the outset. (Geraci Decl. ¶ 23; Exh. 7 to NOL.)

PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION 56 DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

Expunge *Lis Pendens*) has been submitted concurrently herewith and describes in greater detail the CUP application submitted to the City of San Diego, which submission included the Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

After the parties signed the Nov 2nd Written Agreement for Geraci's purchase of the Property, almost immediately Mr. Cotton began attempts to renegotiate the deal for the purchase of the Property. This literally occurred the evening of the day he signed the Nov 2nd Written Agreement. On November 2, 2016, at approximately 6:55 p.m., Cotton sent Geraci an email, which stated:

Hi Larry,

Thank you for meeting today. Since we examined the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you simply acknowledge that here in a reply.

Mr. Geraci receives emails on his phone. It was after 9:00 p.m. in the evening that he glanced at his phone and read the first sentence, "Thank you for meeting with me today." Mr. Geraci responded from his phone "No no problem at all." Mr. Geraci was responding to Mr. Cotton's thanking him for the meeting. (Geraci Dec.  $\P$  10.)

The next day, November 3, 2016, Mr. Geraci read the entire email and phoned Mr. Cotton because the total purchase price Mr. Geraci agreed to pay for the subject property was \$800,000 and he never agreed to provide Mr. Cotton with a 10% equity position in the dispensary as part of the purchase of the property. Mr. Geraci spoke with Mr. Cotton at approximately 12:40 p.m. for approximately 3 minutes. (Geraci Decl. ¶ 10; Call Detail from Geraci's firm's telephone provider, Exh. 3 to the Geraci NOL.) During that telephone call, Mr. Geraci told Mr. Cotton that a 10% equity position in the dispensary was not part of the agreement as he had never agreed to pay him any other amounts above the \$800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." Mr. Cotton did not seem upset and he commented further to the effect that things are "looking pretty good—we all should make some money here." That was the end of the discussion. (Geraci Decl. ¶ 10.)

To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to

participate in different ways in the operation of the future MMCC business at the Property. Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding the operation of such a business. Prior to signing the Nov 2nd Written Agreement, the parties had preliminary discussions related to Cotton's desire to be involved in the operation of the business (not related to the purchase of the Property) and the parties discussed the *possibility* of compensation to Cotton (e.g., a percentage of the net profits) in exchange for his providing various services to the business—but an agreement was never reached as to the operation of the MMCC business. Those discussions were unrelated to the purchase and sale of the Property, which the parties never agreed to amend or modify. (Geraci Decl.  $\P$  11.)

1

2

3

4

5

6

7

8

9

11

21

Beginning in or about mid-February 2017, and after the zoning issues had been resolved, 10 Mr. Cotton began making increasing demands for compensation in connection with the sale. 12 Mr. Geraci was several months into the CUP application process which could potentially take many 13 more months to successfully complete (if it could be successfully completed and approval obtained) and he had already committed substantial resources to the project. Mr. Geraci became increasingly 14 15 concerned that Mr. Cotton was going to interfere with the completion of that process to Mr. Geraci's 16 detriment now that the zoning issues were resolved. To appease Mr. Cotton, Mr. Geraci tried his best 17 to discuss and work out with Cotton some further compensation arrangement that was reasonable and 18 avoid the risk that Mr. Cotton might try to "torpedo" the project and find another buyer. For example, 19 on several successive occasions, Mr. Geraci had attorney Gina Austin draft written agreements that 20 contained terms that Mr. Geraci could live with and hoped would be sufficient to satisfy Mr. Cotton's ever-increasing demands for additional compensation, but Mr. Cotton would reject them as 22 unsatisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which 23 Geraci was not willing to agree, as well as minimum monthly distributions in amounts that Geraci 24 thought were unreasonable and to which he was unwilling to agree. Despite the back and forth 25 communications during the period of approximately mid-February 2017 through approximately mid-26 March 2017, the parties were unable to re-negotiate terms for the purchase of the property to which 27 they both agreed. The Nov 2nd Written Agreement was never amended or modified. Mr. Cotton emailed Mr. Geraci that Mr. Cotton felt that Mr. Geraci was not living up to his agreement and 28

Mr. Geraci responded that Mr. Cotton kept trying to change the deal. As a result, no re-negotiated written agreement regarding the purchase and sale of the property was ever signed by Mr. Geraci or Mr. Cotton after they had signed and agreed to the terms and conditions in the Nov 2nd Written Agreement. (Geraci Decl. ¶ 12.)

Ultimately, Mr. Cotton was extremely unhappy with Mr. Geraci's refusal to accede to Mr. Cotton's demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the Property and Mr. Geraci's refusal to modify or amend the terms and conditions agreed to in the Nov 2nd Written Agreement. Eventually, Mr. Cotton made it clear that he had no intention of living up to and performing his obligations under the Nov 2nd Written Agreement and affirmatively threatened to take action to halt the CUP application process. (Geraci Decl. ¶ 13.)

Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. That discussion was confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc: to Rebecca Berry. (Geraci Decl. ¶ 14; Exh. 4 to Geraci NOL.)

That same day, March 21, 2017 at 3:18 p.m., Mr. Cotton emailed Mr. Geraci reinforcing that he would not honor the Nov 2nd Written Agreement. In that email Mr. Cotton stated that Mr. Geraci had no interest in the property and that "I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you." (Geraci Decl. ¶ 15; Exh. 5 to Geraci NOL.)

Four minutes later at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc: to both Geraci and Rebecca Berry, stating falsely to Ms. Tirandazi: "... the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property." Mr. Cotton's email was false as the parties had a signed agreement for the purchase and sale of the Property – the Nov 2nd Written Agreement. (Geraci Decl. ¶ 15; Exh. 6 to Geraci NOL.)

Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP application without the consent of the applicant (Rebecca Berry, Geraci's authorized agent). (Geraci Decl. ¶ 17.)

Due to Mr. Cotton's clearly stated intention to not perform his obligations under the written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, Mr. Geraci went forward on March 21, 2017, with the filing of his lawsuit against Mr. Cotton to enforce the Nov 2nd Written Agreement. (Geraci Decl. ¶ 18.)

Since the March 21, 2017 filing of the lawsuit, Mr. Geraci has continued to diligently pursue the CUP application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP application, Mr. Geraci and his team have completed the initial phase of the CUP process whereby the City deemed the CUP application complete (although not yet approved) and determined it was located in an area with proper zoning. The CUP application process has not yet reached the stage of a formal City hearing and there has been no final determination to approve the CUP. The status of the CUP application is set forth in the Declaration of Abhay Schweitzer. (Geraci Decl. ¶ 19.)

Mr. Cotton also has made good on the statement in his March 21, 2017 at 3:18 p.m. email that he would be "entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you." (See Geraci Decl. ¶ 15; Exh. 5 to the Geraci NOL.) Documents produced early in the lawsuit by Mr. Cotton revealed that Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with Geraci. As of March 21, 2017, Mr. Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II. (Geraci Decl. ¶ 20.) Mr. Cotton has admitted in his moving papers to selling the property to another buyer. (Def. Memo. Of P's & A's, p. 8, lines 18-23)

24

## **GERACI HAS ESTABLISHED THE PROBABLE VALIDITY OF HIS CLAIMS**

As previously noted, the two claims that "affect title to property" are the specific performance and the declaratory relief causes of actions.

Specific performance of a contract may be decreed whenever: 1) its terms are sufficiently 28 definite; 2) consideration is adequate; 3) there is substantial similarity of the requested performance to

13

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

25

26

27

PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITIO **DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS** 

the contractual terms; 4) there is mutuality of remedies; and 5) plaintiff's legal remedy is inadequate. (*Blackburn v. Charnley* (2004) 117 Cal.App.4th 758, 766.)

Declaratory relief may be sought by any person under a contract, who desires a declaration of his rights or duties with respect to property in cases of actual controversy relating to the legal rights and duties of the respective parties, and may bring an original action or cross-complaint in the superior court for a declaration of his rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. (See Code Civ. Proc., § 1062.5.)

Geraci has proffered evidence sufficient to sustain his burden to establish the "probable validity" of his claim. The factual basis of the two claims is identical, i.e., the parties signed a Nov 2 Written Agreement, which provided:

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd., CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary.)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.

# /s/ /s/ Larry Geraci /s/ Darryl Cotton

The parties even went so far as to have the document signed before a Notary Public. There is no question that the above-recited agreement constitutes a valid and enforceable agreement under California law. Each of the requisite elements is clearly met: 1) its terms are sufficiently definite, (the parties are identified; the property identified; the condition precedent identified; the down payment is identified; and the total purchase price is identified); 2) consideration is adequate (the has been no argument advanced by Mr. Cotton that \$800,000.00 is inadequate consideration); 3) there is substantial similarity of the requested performance to the contractual terms; 4) there is mutuality of remedies (i.e., each party could have sued for breach of contract, specific performance and declaratory relief); and 5) plaintiff's legal remedy is inadequate (with regard to property claims, the legal remedy is

25

26

27

28

1

2

3

4

5

6

PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION T DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

presumed inadequate; see Real Estate Analytics, LLC v. Vallas (2008) 160 Cal.App.4th 463.).

The facts also support the declaratory relief action under Code of Civil Procedure, section 1062.5, as there is a valid written contract to which Mr. Geraci is a party. He is clearly entitled to seek declaratory relief with regard to his rights under that contract.

### V. <u>CONCLUSION</u>

Based on the foregoing argument and the evidence presented, this Court should deny the motion to expunge the *lis pendens*.

Dated: April 10, 2018

FERRIS & BRITTON, A Professional Corporation

Wenstein By

Scott H. Toothacre

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS



| 1        | FERRIS & BRITTON  |                       |                                     |
|----------|---|-----------------------|-------------------------------------|
| 2        | A Professional Corporation<br>Michael R. Weinstein (SBN 106464)   |                       |                                     |
| 3        | Scott H. Toothacre (SBN 146530)   |                       |                                     |
| 4        | San Diego, California 92101<br>Telephone: (619) 233-3131  |                       |                                     |
| 5        | San Diego, California 92101<br>Telephone: (619) 233-3131<br>Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com |                       |                                     |
| 6        | stoothacre@ferrisbritton.com  |                       |                                     |
| 7        | Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and<br>Cross-Defendant REBECCA BERRY                       |                       |                                     |
| 8        | SUPERIOR COURT  | OF CALIFORNIA         |                                     |
| 9        | COUNTY OF SAN DIEGO   | ), CENTRAL DIVIS      | SION                                |
| 10       | LARRY GERACI, an individual,  | Case No. 37-2017-     | 00010073-CU-BC-CTL                  |
| 11       | Plaintiff,  | Judge:<br>Dept.:      | Hon. Joel R. Wohlfeil<br>C-73       |
| 12       | v.  | PLAINTIFF LAR         |                                     |
| 13       | DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,   | <b>OBJECTIONS TO</b>  | O REQUEST FOR<br>CE IN SUPPORT OF   |
| 14       | Defendants.   | DEFENDANT DA          | ARRYL COTTON'S<br>PUNGE LIS PENDENS |
| 15       |   | [IMAGED FILE]         |                                     |
| 16       | DARRYL COTTON, an individual,   | Hearing Date:         | April 13, 2018                      |
| 17       | Cross-Complainant,  | Hearing Time:         | 9:00 a.m.                           |
| 18       | v.  | Filed:<br>Trial Date: | March 21, 2017<br>May 11, 2018      |
| 19<br>20 | LARRY GERACI, an individual, REBECCA<br>BERRY, an individual, and DOES 1<br>THROUGH 10, INCLUSIVE,              | Ina Date.             | Way 11, 2010                        |
| 21       | Cross-Defendants.   |                       |                                     |
| 22       |   |                       |                                     |
| 23       |   |                       |                                     |
| 24       | Plaintiff, LARRY GERACI, hereby objects   | to Defendant Darryl   | Cotton's Request for Judicial       |
| 25       | Notice in Support of his Motion to Expunge Notice of Pendency of Action ("Request for Judicial                  |                       |                                     |
| 26       | Notice").   |                       |                                     |
| 27       | Specifically, it is noted that Cotton fails to cite any evidence code section whatsoever in support             |                       |                                     |
| 28       | of his Request for Judicial Notice. Nor does he cite  | e any case law to sup | pport his Request for Judicial      |
|          | 1 PLAINTIFF LARRY GERACI'S OBJECTIONS   | S TO REQUEST FO       | 1143<br>R JUDICIAL NOTICE IN        |

Notice. As such, the Request for Judicial Notice should be denied outright. 1

Notwithstanding this general objection to the entirety of the Request For Judicial Notice, specific documents for which Cotton requests judicial notice are not relevant to the instant proceeding to expunge *lis pendens*, nor are they the proper subject of judicial notice.

Cotton requests judicial notice of the following documents:

Verified Petition for Alternative Writ of Mandate (Code Civ. Proc., § 1085) filed by 6 1. Plaintiff on October 6, 2017;

Plaintiff Larry Geraci's Complaint for: 1) Breach of Contract; 2) Breach of the Covenant 2. of Good Faith and Fair Dealing; 3) Specific Performance; and 4) Declaratory Relief filed March 21, 2017;

City of San Diego, Development Services Department Information Bulletin 170 3. (October 2017) (City Information Bulletin describing "the application process for a Marijuana Outlet");

4.

Ownership Disclosure Statement – Form DS-318;

5. City of San Diego Development Services Department Parcel Information Report -Report Number 101, dated March 20, 2018; and

16 Verified Memorandum of Points and Authorities in Support of Darryl Cotton's 6. Response to (1) Motion by Plaintiff/Cross-Defendant Larry Geraci and Cross-Defendant Rebecca Berry 17 to Compel the Deposition of Darryl Cotton, and (2) Motion by Real Parties in Interest, Larry Geraci 18 19 and Rebecca Berry, to Compel the Deposition of Darryl Cotton, filed January 22, 2018.

20 21

22

23

24

25

26

27

28

I.

2

3

4

5

7

8

9

10

11

12

13

14

15

#### JUDICIAL NOTICE SHOULD BE DENIED BECAUSE COTTON HAS PROVIDED NO INFORMATION FOR THE COURT TO EVALUATE THE PROPRIETY JUDICIAL NOTICE

Judicial notice should be denied because Cotton has provided no information to support his request. Section 453(b) of the California Evidence Code states that a court shall take judicial notice only when the requesting party "[f]urnishes the court with sufficient information to enable it to take judicial notice of the matter. (Cal. Evid. Code, § 453(b).) A court may deny a request for judicial notice made without support. (Willis v. State of California (1994) 223 Cal.App.4th 291 [denying a request for judicial notice where request was made 'without appending any information whatsoever"].) 111

Here, Cotton's Request for Judicial Notice fails to include any supporting documentation or citation to any Evidence Code sections. Cotton also fails to indicate the relevance or purpose for taking judicial notice of these documents. He simply provides no indication as to the nature or scope of judicial notice being requested. Likewise, Cotton provides no legal justification for the Court to base its decision on the Request. As in *Willis*, Cotton's request is so deficient in supporting information that it must be denied. (See *Willis, supra*, 22 Cal.App.4th at p. 291.)

### II. JUDICIAL NOTICE SHOULD BE DENIED BECAUSE THE PROFFERED DOCUMENTS CONTAIN INADMISSIBLE HEARSAY

Judicial notice should be denied because the proffered documents contain inadmissible hearsay if they are offered for the truth of the matters asserted therein. A "court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file." (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865; *Mangini v. R.J. Reynolds* (1994) 7 Cal.4th 1057, 1063 ["While courts may notice official acts and public records, we do not take judicial notice of the truth of all matters stated therein."].)

Here, because Cotton does not specify his purpose for the Request, Plaintiff's must assume he intends to offer the exhibits for the truth of the matters stated therein. If so, the matters are inadmissible hearsay. "Although the *existence* of a document may be judicially noticeable, the truth of the statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable." (*Fremont Indemnity Co. v. Fremont General Corp.* (2001) 148 Cal.App. 4th 97, 113.)

Further, out-of-court statements may not be admitted in a request for judicial notice simply because these statements have been previously filed with the court: "What is meant by taking judicial notice of Court records? There exists a mistaken notion that this means taking judicial notice of the existence of facts asserted in *every document* of a court file, including *pleadings* and *affidavits*. However, a court *cannot* take judicial notice of *hearsay allegations* as being true, just because they are part of a court record or file. A court may take judicial notice of the *truth* of facts asserted in documents such as order, findings of fact and conclusions of law, and judgments." (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1568, emphasis in original [quoting 2 *Jefferson's California Evidence* 

Benchbook (2d ed. 1982) § 47.2, p. 1757].) Because Cotton has submitted these hearsay statements for
 no purpose other than to take judicial notice of the truth of the facts stated in the documents, then
 judicial notice should be denied.

### III. CONCLUSION

Cotton's request for judicial notice should be denied. He has failed to provide any information to support his request as required by section 453(b) of the Evidence Code. Additionally, Cotton's use of these documents indicates that judicial notice would be improper because the subject matter constitutes inadmissible hearsay.

Dated: April 10, 2018

FERRIS & BRITTON A Professional Corporation

Weinstein By:

Michael R. Weinstein Scott H. Toothacre Attorneys for Plaintiff and Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

PLAINTIFF LARRY GERACI'S OBJECTIONS TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

| 1<br>2<br>3<br>4<br>5 | FERRIS & BRITTON<br>A Professional Corporation<br>Michael R. Weinstein (SBN 106464)<br>Scott H. Toothacre (SBN 146530)<br>501 West Broadway, Suite 1450<br>San Diego, California 92101<br>Telephone: (619) 233-3131<br>Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com |  |                                |  |
|-----------------------|--|--|--------------------------------|--|
| 6<br>7                | stoothacre@ferrisbritton.com<br>Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and<br>Cross-Defendant REBECCA BERRY  |  |                                |  |
| 8                     | SUPERIOR COURT   | OF CALIFORNIA  |                                |  |
| 9                     | COUNTY OF SAN DIEGO, CENTRAL DIVISION  |  |                                |  |
| 10                    | LARRY GERACI, an individual,   | Case No. 37-2017-0   | 00010073-CU-BC-CTL             |  |
| 11                    | Plaintiff,   | Judge:   | Hon. Joel R. Wohlfeil          |  |
| 12                    | v.   | Dept.:   | C-73                           |  |
| 13                    | DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,  | DECLARATION OF LARRY GERACI IN<br>OPPOSITION TO DEFENDANT DARRYL<br>COTTON'S MOTION TO EXPUNGE LIS |                                |  |
| 14<br>15              | Defendants.  | PENDENS  |                                |  |
|                       |  | [IMAGED FILE]  |                                |  |
| 16<br>17              | DARRYL COTTON, an individual,  | Hearing Date:<br>Hearing Time:   | April 13, 2018<br>9:00 a.m.    |  |
| 18                    | Cross-Complainant,<br>v.   | Filed:<br>Trial Date:  | March 21, 2017<br>May 11, 2018 |  |
| 19                    | LARRY GERACI, an individual, REBECCA   |  |                                |  |
| 20                    | BERRY, an individual, and DOES 1<br>THROUGH 10, INCLUSIVE,   |  |                                |  |
| 21                    | Cross-Defendants.  |  |                                |  |
| 22                    |  |  |                                |  |
| 23                    | I, Larry Geraci, declare:  |  |                                |  |
| 24                    | 1. I am an adult individual residing in the County of San Diego, State of California, and I  |  |                                |  |
| 25                    | am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts  |  |                                |  |
| 26                    | and if called as a witness could and would so testify.   |  |                                |  |
| 27                    | 2. In approximately September of 2015, I began lining up a team to assist in my efforts to   |  |                                |  |
| 28                    | develop and operate a Medical Marijuana Consume  | er Cooperative (MMC  | CC) business (aka a medical    |  |
|                       | 1  |  | 1147                           |  |

DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

marijuana dispensary) in San Diego County. At the time, I had not yet identified a property for the MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE.
I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal Group.

3. The search to identify potential locations for the business took some time, as there are a number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities, or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a potential site for acquisition and development for use and operation as a MMCC. And in approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might meet the requirements for an MMCC site.

4. For several months after the initial contact, my consultant, Jim Bartell, investigated issues related to whether the location might meet the requirements for an MMCC site, including zoning issues and issues related to meeting the required distances from certain types of facilities and residential areas. For example, the City had plans for street widening in the area that potentially impacted the ability of the Property to meet the required distances. Although none of these issues were resolved to a certainty, I determined that I was still interested in acquiring the Property.

5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if I did not obtain CUP approval then I would not close the purchase and I would lose my

### DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

investment. I was willing to pay a price for the Property based on what I anticipated it might be worth 2 if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the Property would be worth in the absence of its approval for use as a medical 4 marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of 5 \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement 6 7 for my purchase of the Property from him on the terms and conditions stated in the agreement (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written 8 9 Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-Defendant, Larry Geraci's Notice of Lodgment in Support of Opposition to Motion to Expunge Lis 10 Pendens (hereafter the "Geraci NOL"). I tendered the \$10,000 deposit to Mr. Cotton as acknowledged 12 in the Nov 2nd Written Agreement.

11

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1

3

6. In paragraph 5 of his supporting declaration, Darryl Cotton states:

"On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the "November Agreement"). The November Agreement consisted of the following: If the CUP was approved, then Geraci would, inter alia, provide me: (i) a total purchase price of \$800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the CUP was denied, I would keep an agreed upon \$50,000 non-refundable deposit ("NRD") and the transaction would not close. In other words, the issuance of a CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the \$50,000 NRD."

Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of the sale of the Property and we reached an agreement on the final terms of the sale of the Property. That agreement was not oral. We put our agreement in writing in a simple and straightforward written

28

### TO DEFENDANT DARR **DECLARATION OF LARRY GERACI IN OPPOS COTTON'S MOTION TO EXPUNGE LIS PENDENS**

agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2<sup>nd</sup> Written Agreement, 1 2 Exhibit 2 to Geraci NOL.) The written agreement states in its entirety: 3 11/02/2016 4 Agreement between Larry Geraci or assignee and Darryl Cotton: 5 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd., CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a 6 Marijuana Dispensary. (CUP for a dispensary.) 7 Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the 8 license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property. 9 10 **Darryl** Cotton Larry Geraci 11 I never agreed to pay Mr. Cotton a \$50,000.00 non-refundable deposit. At the meeting, Mr. Cotton stated he would like a \$50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a 12 13 \$10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement. After he signed the written agreement, I paid him the \$10,000 cash as we had agreed. If I had agreed to 14 pay Mr. Cotton a \$50,000 deposit, it would have been a very simple thing to change "\$10,000" to 15 16 \$50,000" in the agreement before we signed it. 17 I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never 18 agreed to pay Mr. Cotton a minimum monthly equity distribution of \$10,000. If I had agreed to pay 19 Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution 20 of \$10,000, then it would have also been a simple thing to add a sentence or two to the agreement to 21 say so. 22 What I did agree to was to pay Mr. Cotton a total purchase price of \$800,000, with the balance 23 of \$790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the 24 Property and the \$10,000. So that is how the agreement was written. 25 7. In paragraph 6 of his supporting declaration, Darryl Cotton states: "At the November 2, 2016, meeting we reached the November Agreement, 26 27 Geraci: (i) provided me with \$10,000 in cash towards the NRD of \$50,000, for 28 which I executed a document to record my receipt thereof (the "Receipt"); (ii) 4

DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS promised to have his attorney, Gina Austin ("<u>Austin</u>"), *promptly* reduce the oral November Agreement to written agreements for execution; and (iii) promised to not submit the CUP to the City until he paid me the balance of the NRD."

I did pay Mr. Cotton the \$10,000 cash after we signed the Nov 2nd Written Agreement. As stated above, I never agreed to a \$50,000 deposit and, if I had, it would have been a simple thing to state that in our written agreement.

Mr. Cotton refers to the written agreement (i.e., the Nov 2nd Written Agreement) as a "Receipt." Calling the Agreement a "Receipt" was never discussed. There would have been no need for a written agreement before a notary simply to document my payment to him of \$10,000. In addition, had the intention been merely to document a written "Receipt" for the \$10,000 payment, then we could have identified on the document that it was a "Receipt" and there would have been no need to put in all the material terms and conditions of the deal. Instead, the document is expressly called an "Agreement" because that is what we intended.

I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the \$800,000. At his request, I agreed to pay him for the property into two parts: \$400,000 as payment for the property and \$400,000 as payment for the relocation of his business. As this would benefit him for tax purposes but would not affect the total purchase price or any other terms and conditions of the purchase, I stated a willingness to later amend the agreement in that way.

I did not promise to delay submitting the CUP to the City until I paid the alleged \$40,000 balance of the deposit. I agreed to pay a \$10,000 deposit only. Also, we had previously discussed the long lead-time to obtain CUP approval and that we had already begun the application submittal process as discussed in paragraph 8 below.

8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as

the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of a CUP would be a condition of the purchase and sale of the Property.

9. As noted above, I had already put together my team for the MMCC project. My design professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of the Project and the CUP application and approval process. Mr. Schweitzer was responsible for coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration (Declaration of Abhay Schweitzer in Support of Opposition to Motion to Expunge Lis Pendens) has been submitted concurrently herewith and describes in greater detail the CUP Application submitted to the City of San Diego, which submission included the Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr.
 Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This literally occurred the evening of the day he signed the Nov 2nd Written Agreement.

On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

Hi Larry,

Thank you for meeting today. Since we examined the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored

### DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

element in m y decision to s ell the prop erty. I'll be fi ne if you sim ply acknowledge that here in a reply.

I receive m y emails on m y phone. It was after 9:00 p.m. in the evening that I glanced at m y phone and read the first sentence, "T hank you for meeting with me today." And I responded from my phone "No no problem at all." I was responding to his thanking me for the meeting.

The next day I read the entire em ail and I telephoned Mr. Cotton beca use the total purchase price I agreed to pay for the subject property was \$800,000 and I had never agreed to provide him a 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the Call Detail from my firm 's telephone provider s howing those two telephone calls is attached as Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above the \$800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." He was not upset and he commented further to the effect that things are "looking pretty good—we all shou Id make some money here." And that was the end of the discussion.

11. To be clear, prior to signing the N ov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding the operation of such a business. Prior to s igning the Nov 2nd Written Agreement we had preliminary discussions related to his de sire to be involved in the *operation* of the business (n ot re lated to the purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits) in exchange for his providing various services to the business. Those discussions were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

Beginning in or about mid-February 2017, and after the zoning issues had been resolved,
Mr. Cotton began making increasing demands for compensation in connection with the sale. We were
several months into the CUP applic ation process which could potentially take m any more months to

DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARR COTTON'S MOTION TO EXPUNGE LIS PENDENS

successfully complete (if it could be successfully completed and approval obtained) and I had already committed substantial resources to the project. I was very concerned that Mr. Cotton was going to interfere with the completion of that process to my detriment now that the zoning issues were resolved. I tried my best to discuss and work out with him some further compensation arrangement that was reasonable and avoid the risk he might try to "torpedo" the project and find another buyer. For example, on several successive occasions I had my attorney draft written agreements that contained terms that I that I believed I could live with and hoped would be sufficient to satisfy his demands for additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as on minimum monthly distributions in amounts that I thought were unreasonable and to which I was unwilling to agree. Despite our back and forth communications during the period of approximately mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for the purchase of the property to which we were both willing to agree. The Nov. 2nd Written Agreement was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and I responded to him that he kept trying to change the deal. As a result, no re-negotiated written agreement regarding the purchase and sale of the property was ever signed by Mr. Cotton or me after we signed and agreed to the terms and conditions in the Nov 2d Written Agreement.

13. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the Agreement and affirmatively threatened to take action to halt the CUP application process.

Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application.
That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as
 Exhibit 4 to the Geraci NOL.

15. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his property and that "I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 5 to the Geraci NOL.

16. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "… the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached as Exhibit 6 to the Geraci NOL. Mr. Cotton's email was false as we had a signed agreement for the purchase and sale of the Property – the Nov 2nd Written Agreement.

17. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

18. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to enforce the Nov 2<sup>nd</sup> Written Agreement.

19. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue our CUP Application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP application, we have completed the initial phase of the CUP process whereby the City deemed the CUP application complete (although not yet approved) and determined it was located in an area with proper zoning. We have not yet reached the stage of a formal City hearing and there has been no final determination to approve the CUP. The current status of the CUP Application is set forth in the

**COTTON'S MOTION TO EXPUNGE LIS PENDENS** 

ON TO DEFENDANT DAR

**DECLARATION OF LARRY GERACI IN OPPOSI** 

Declaration of Abhay Schweitzer.

20. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m. email (referenced in paragraph 15 above - see Exhibit 5 to the Geraci NOL) stating that he would be "entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. We have learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II.

21. Although he entered into this alternate purchase agreement with Mr. Martin as early as March 21, 2017, to our knowledge in the nine (9) months since, neither Mr. Cotton nor Mr. Martin or other agent has submitted a separate CUP Application to the City for processing. During that time, we continued to process our CUP Application at great effort and expense.

22. During approximately the last 17 months, I have incurred substantial expenses in excess of \$150,000 in pursuing the MMCC project and the related CUP application.

23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the status of the CUP application and the problems we were encountering (e.g., an initial zoning issue) from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me on November 16, 2016, in which he asks me, "Did they accept the CUP application?" Mr. Cotton was well aware at that time that we had already submitted the CUP application. Until the City deems the CUP application complete it does not proceed to the next step—the review of the CUP application.

25 //// 26 ////

27 ////

28 ||///

COTTON'S MOTION TO EXPUNGE LIS PENDENS

TO DEFENDANT DARI

**DECLARATION OF LARRY GERACI IN OPPOS** 

| 1 | I declare under penalty of perjury under the laws of the State of California that the foregoing is |
|---|--|
| 2 | true and correct. Executed this May of April, 2018.  |
| 3 | $\mathcal{O}$  |
|   | Acy/a_   |
|   | LARRY GERACI   |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |
| 2 |  |
|   |  |
|   |  |
|   |  |
| ; |  |
| 1 |  |
| 3 |  |
| ) |  |
| ) |  |
|   |  |
|   |  |
| 5 |  |
| ł |  |
| 5 |  |
| 5 |  |
| 7 |  |
| 8 |  |

| FERRIS & BRITTON<br>A Professional Corporation<br>Michael R. Weinstein (SBN 106464)<br>Scott H. Toothacre (SBN 146530)<br>501 West Broadway, Suite 1450<br>San Diego, California 92101<br>Telephone: (619) 233-3131<br>Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com |  |                                |
|--|--|--------------------------------|
| stoothacre@ferrisbritton.com<br>Attorneys for Plaintiff/Cross-Defendant LARRY GI<br>Cross-Defendant REBECCA BERRY  | ERACI and  |                                |
| SUPERIOR COURT   | Γ OF CALIFORNIA  |                                |
| COUNTY OF SAN DIEG   |  |                                |
| LARRY GERACI, an individual.   |  | -00010073-CU-BC-CTL            |
| Plaintiff,   | Judge:<br>Dept.:   | Hon. Joel R. Wohlfeil<br>C-73  |
| v.<br>DARRYL COTTON, an individual; and<br>DOES 1 through 10, inclusive,<br>Defendants.  | Dept. C-73<br>DECLARATION OF ABHAY<br>SCHWEITZER IN SUPPORT OF<br>OPPOSITION TO DEFENDANT DARRY<br>COTTON'S MOTION TO EXPUNGE LIS<br>PENDENS |                                |
| DARRYL COTTON, an individual,<br>Cross-Complainant,  | [IMAGED FILE]<br>Hearing Date:<br>Hearing Time:  | April 13, 2018<br>9:00 a.m.    |
| v.<br>LARRY GERACI, an individual, REBECCA<br>BERRY, an individual, and DOES 1<br>THROUGH 10, INCLUSIVE,<br>Cross-Defendants.  | Filed:<br>Trial Date:  | March 21, 2017<br>May 11, 2018 |
| I, Abhay Schweitzer, declare:  | _  |                                |
| 1. I am over the age of 18 and am not a  | a party to this action.  | I have personal knowledge      |
| the facts stated in this declaration. If called as a   | a witness, I would te  | estify competently thereto.    |
| provide this declaration in support of the opposition by Plaintiff and Cross-Defendant, Larry Geraci, to   |  |                                |
| the motion to expunge the lis pendens.   |  |                                |
| 2. I am a building designer in the state   | of California and a Pr   | rincipal with Techne, a desi   |
|  | 1  |                                |

firm I founded in approximately December 2010. Techne provides design services to clients throughout California. Our offices are located at 3956 30<sup>th</sup> Street, San Diego, CA 92104. Our firm has worked on approximately 30 medical marijuana projects over the past 5 years, including a number of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of San Diego ("City"). One of these projects was and is an application for a MMCC to be located at 6176 Federal Ave., San Diego, CA 92105 (the "Property").

1

2

3

4

5

6

7

8

9

10

11

3. On or about October 4, 2016, Rebecca Berry, whom I was and am informed was acting as the agent of Larry Geraci, hired my firm to provide design services in connection with the application for a MMCC to be developed and built at the Property (the "Project"). Those services included, but are not limited to, services in connection with the design of the Project and application for a Conditional Use Permit (the "CUP").]

4. The first step in obtaining a CUP is to submit an application to the City of San Diego.
My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible
for preparing the noticing package and radius maps) prepared the CUP application for the client as
well as prepared the supporting plans and documentation. My firm coordinated their work and
incorporated it into the submittal.

17 5. On or after October 31, 2016, I submitted the application to the City for a CUP for a medical marijuana consumer cooperative to be located on the Property. The CUP application for the 18 Project was submitted under the name of applicant, Rebecca Berry. The submittal of the CUP 19 20 application required the submission of several forms to the City, including Form DS-318 signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and correct copy of 21 Form DS-318 that I submitted to the City is attached as Exhibit 1 to the Notice of Lodgment in 22 23 Support of Plaintiff Larry Geraci's Opposition to Defendant Darryl Cotton's Motion to Expunge Lis 24 Pendens (hereinafter the "Geraci NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from which to choose when checking – "Owner", "Tenant/Lessee" and "Redevelopment Agency". The purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and* 

DECLARATION OF ABHAY SCHWEITZER IN OPPOSITION TO DEFENDANT DARRY COTTON'S MOTION TO EXPUNGE LIS PENDENS

must be signed by all persons with an interest in the property.

1

2

3

4

5

6

7

8

9

10

11

12

7. The CUP application process generally involves several rounds of comments from the City in which the applicant is required to respond in order to "clear" the comment. This processing involved substantial communication back and forth with the City, with the City asking for additional information, or asking for changes, and our responding to those requests for additional information and making any necessary changes to the plans. I have been the principal person involved in dealings with the City of San Diego regarding the CUP application. My primary contact during the process had been Firouzeh Tirandazi, Development Project Manager, City of San Diego Development Services Department, tele (619) 446-5325, whom the City initially assigned to be the project manager for the CUP application. Recently the Project Manager has changed from Firouzeh Tirandazi to Cherlyn Cac.

8. We have been engaged in the application process for this CUP application for approximately seventeen (17) months so far.

13 9. At the outset of the review process a difficulty was encountered that delayed the processing of the application. The Project was located in an area zoned "CO" which supposedly 14 included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not 15 specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the 16 City passed a new regulation that amended the zoning ordinance to clarify that operating a medical 17 marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this 18 regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and 19 20 the City resumed its processing of the CUP application.

21 10. The CUP application for this Project has completed the initial phase of the process. This initial phase was completed when the City deemed the CUP application complete (although not 22 yet approved) and determined the Project was located in an area with proper zoning. When this 23 occurred, as required, notice of the proposed project was given to the public as follows: First, on 24 March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for 25 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second, 26 the City mailed the Notice of Application to all properties within 300 feet of the subject property. 27 Third, as applicant we posted the Notice of Application at the property line as was required. 28

DECLARATION OF ABHAY SCHWEITZER IN OPPOSITION TO DEFENDANT DARRYI COTTON'S MOTION TO EXPUNGE LIS PENDENS

11. Since the completion of the initial phase of the process we have been engaged in successive submissions and reviews and are presently engaged still in that submission and review process. The most recent comments from the City were received on October 20, 2017.

1

2

3

12 In connection with the CUP application there is an issue left to resolve regarding a 4 5 street dedication. In my previous declaration submitted October 30, 2017, I stated that at that time I 6 expected this issue to be resolved within the next six (6) weeks. The issue has not yet been resolved. 7 A medical marijuana dispensary cannot be located within 100 feet of a residential zoned lot and the Property is located within 100 feet of a residential zoned lot. To overcome this barrier, we previously 8 9 suggested to the City the following solution: that we make an irrevocable offer of dedication of 7-feet of the Property to the City of San Diego which, when accepted, would mean the Property would be 10 more than 100 feet from a residential neighborhood and thereby satisfy the requirement. Previously 11 12 Jim Bartell met with the City's reviewer responsible for this issue, who indicated a tentative agreement 13 with our proposed solution. However, the most recent comments issued by the City regarding the project still listed as "not cleared" the issue of the Property location being within 100 feet of a 14 residential zoned lot. Thus, the City's reviewer has still not formally recommended approval of our 15 16 proposed solution of an offer of dedication and that issue still needs to be "cleared". Nevertheless, I 17 still expect the City's reviewer to ultimately "clear" the issue based on our suggested solution of an offer of dedication as there is no basis in the San Diego Municipal Code to deny our proposed offer of 18 19 dedication. Currently, my best estimate of when I expect this issue to be "cleared" or resolved is on or 20 about late June or early July 2018. What I mean by resolved is that point in time when the City staff 21 responsible for this correction formally accepts our proposed solution and "clears" the comments from 22 their review. However, the irrevocable offer of dedication is not effective until the proposed Conditional Use Permit is approved at the final instance and the irrevocable offer of dedication is 23 24 properly recorded.

In connection with the CUP application another issue recently arose in that we have
been required by the City to provide a geotechnical investigation for the Subject Property. The
required geotechnical investigation will be performed by SCST, Inc. a professional engineering firm
headquartered in San Diego, with whom I have contracted on behalf of Mr. Geraci and Ms. Berry.

DECLARATION OF ABHAY SCHWEITZER IN OPPOSITION TO DEFENDANT DARRYI COTTON'S MOTION TO EXPUNGE LIS PENDENS

SCST is comprised of over 130 professionals who provide geotechnical engineering, environmental science & engineering, special inspection & materials testing, and facilities consulting service. SCST is comprised of skilled geotechnical engineers, civil and environmental engineers, environmental scientists, engineering geologists, multi-credential inspectors and technicians. 4 To conduct the necessary soils testing we are required to file a permit with the San Diego County Department of Environmental Health because the exploratory borings exceed 20 feet below ground surface. To 6 obtain the permit we must include a signed Property Owner Consent form evidencing consent by the 8 property owner, Darryl Cotton. I am informed and believe that the Court has issued an order permitting access to the Subject Property for soils testing and requiring Mr. Cotton to sign the Property Owner Consent form. As a result, we are proceeding to have the geotechnical investigation performed.

Once the City has cleared all the outstanding issues it will issue an environmental 14 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination ("NORA").

15. In my previous declaration submitted October 30, 2017, I stated that at that time I expected the NORA to be issued sometime in late December 2017 or January 2018. The NORA has not yet been issued. Currently, my best estimate is that the NORA will be issued a week or so after the City has cleared all cycle issues. My best estimate is about one week after the dedication issue is cleared, so sometime in July 2018.

The NORA must be published for 10 business days. If no interested party appeals the 16. NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The hearing is usually set on at least 30 days' notice so the City's Staff has time to prepare a report with its recommendations regarding the issues on which the hearing officer must make findings. If there is no appeal of the NORA, I expect the hearing before the hearing officer to be held on or about mid-to-late August 2018 or afterwards.

17. If the NORA is appealed it will be set for hearing before the City Council. Currently, it is my opinion that the earliest an appeal of the NORA could be heard before the City Council would be on or about mid-to-late August 2018 or afterwards. In all but one instance, the City Council has denied a NORA appeal related to a medical marijuana CUP application. The one NORA appeal that

5

1

2

3

5

1 was upheld is a project located in a flood zone.

18. If there is a NORA appeal and such appeal is denied by the City Council, then the earliest I would expect the CUP application to be heard by a hearing officer would be on or about mid-to-late September 2018.

19. If there is a NORA appeal and it is upheld by the City Council, the City Council would retain jurisdiction and the CUP application would be heard by the City Council for a final determination at some point after the NORA appeal. In that case the earliest I would expect this to occur would also be on or about mid-to-late September 2018.

20. To date we have not yet reached the stage of a City Council hearing and there has been no final determination to approve the CUP.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed this  $\mathcal{Q}^{\mu}$  day of April, 2018.

Dated: 04/09/18 

ABHAY SCHWEITZER

| 1  |   |                                |                               |
|----|---|--------------------------------|-------------------------------|
|    |   |                                |                               |
|    |   |                                |                               |
| 1  | FERRIS & BRITTON<br>A Professional Corporation  |                                |                               |
| 2  | Michael R. Weinstein (SBN 106464)   |                                |                               |
| 3  | Scott H. Toothacre (SBN 146530)<br>501 West Broadway, Suite 1450<br>San Diago, California 02101       |                                |                               |
| 4  | San Diego, California 92101<br>Telephone: (619) 233-3131<br>Fax: (619) 232-9316                       |                                |                               |
| 5  | mweinstein@ferrisbritton.com<br>stoothacre@ferrisbritton.com  |                                | :                             |
| 6  | U U U U U U U U U U U U U U U U U U U   | P A CI and                     |                               |
| 7  | Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and<br>Cross-Defendant REBECCA BERRY             |                                |                               |
| 8  | SUPERIOR COURT  | OF CALIFORNIA                  |                               |
| 9  | COUNTY OF SAN DIEGO   | ), CENTRAL DIVIS               | ION                           |
| 10 | LARRY GERACI, an individual,  | Case No. 37-2017-0             | 00010073-CU-BC-CTL            |
| 11 | Plaintiff,  | Judge:<br>Dept.:               | Hon. Joel R. Wohlfeil<br>C-73 |
| 12 | v.  | DECLARATION                    |                               |
| 13 | DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,                                       | WEINSTEIN IN C                 |                               |
| 14 | Defendants.   |                                | PUNGE LIS PENDENS             |
| 15 |   | [IMAGED FILE]                  |                               |
| 16 | DARRYL COTTON, an individual,   | Hearing Date:<br>Hearing Time: | April 13, 2018<br>9:00 a.m.   |
| 17 | Cross-Complainant,  | Filed:                         | March 21, 2017                |
| 18 | <b>v</b> .  | Trial Date:                    | May 11, 2018                  |
| 19 | LARRY GERACI, an individual, REBECCA<br>BERRY, an individual, and DOES 1                              |                                |                               |
| 20 | THROUGH 10, INCLUSIVE,  |                                |                               |
| 21 | Cross-Defendants.   |                                |                               |
| 22 |   |                                |                               |
| 23 | I, Michael R. Weinstein, declare:   |                                |                               |
| 24 | 1. I am an attorney with Ferris & Brit  | tton, APC, the attorn          | eys for Plaintiff and Cross-  |
| 25 | Defendant, LARRY GERACI, and Cross-Defendant, REBECCA BERRY, in this action. I have                   |                                |                               |
| 26 | personal knowledge of the facts stated in this declaration. If called as a witness, I would testify   |                                |                               |
| 27 | competently thereto. I provide this declaration in support of Mr. Geraci's opposition to Mr. Cotton's |                                |                               |
| 28 | Motion to Expunge Lis Pendens.  |                                |                               |
|    | 1   |                                | 1164                          |
|    | DECLARATION OF MICHAEL R. WEINS   |                                |                               |
| ļ  | DARRYL COTTON'S MOTION  | TO EXPUNGE LIS                 | PENDENS                       |

DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

We have learned through documents produced in this lawsuit that well prior to 2. March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with Geraci. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, a Richard John Martin II. A true and correct copy of the Purchase and Sale Agreement between Darryl Cotton and Richard John Martin II, dated March 21, 2017, produced by Darryl Cotton, is attached as Exhibit 8 to the Notice of Lodgment in Support of Plaintiff Larry Geraci's Opposition to Motion to Expunge Lis Pendens (hereafter the "Geraci NOL").

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of April, 2018, in San Diego, California.

M. dal R. Weinstein

MICHAEL R. WEINSTEIN

DECLARATION OF MICHAEL R. WEINSTEIN IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

| 1  | FERRIS & BRITTON<br>A Professional Corporation                                      |                       |                                   |  |
|----|---|-----------------------|-----------------------------------|--|
| 2  | Michael R. Weinstein (SBN 106464)<br>Scott H. Toothacre (SBN 146530)                |                       |                                   |  |
| 3  | 501 West Broadway, Suite 1450<br>San Diego, California 92101                        |                       |                                   |  |
| 4  | Telephone: (619) 233-3131   |                       |                                   |  |
| 5  | Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com<br>stoothacre@ferrisbritton.com |                       |                                   |  |
| 6  | Attorneys for Plaintiff/Cross-Defendant LARRY GE                                    | RACI and              |                                   |  |
| 7  | Cross-Defendant REBECCA BERRY   |                       |                                   |  |
| 8  | SUPERIOR COURT OF CALIFORNIA  |                       |                                   |  |
| 9  | COUNTY OF SAN DIEGO   |                       |                                   |  |
| 10 | LARRY GERACI, an individual,  | Case No. 37-2017-0    | 00010073-CU-BC-CTL                |  |
| 11 | Plaintiff,  | Judge:<br>Dept.:      | Hon. Joel R. Wohlfeil<br>C-73     |  |
| 12 | v.  | NOTICE OF LOD         | GMENT IN SUPPORT                  |  |
| 13 | DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,                     |                       | ARRY GERACI'S<br>DEFENDANT DARRYL |  |
| 14 | Defendants.   |                       | TON TO EXPUNGE LIS                |  |
| 15 |   | [IMAGED FILE]         |                                   |  |
| 16 | DARRYL COTTON, an individual,   | Hearing Date:         | April 13, 2018                    |  |
| 17 | Cross-Complainant,  | Hearing Time:         | 9:00 a.m.                         |  |
| 18 | v.  | Filed:<br>Trial Date: | March 21, 2017<br>May 11, 2018    |  |
| 19 | LARRY GERACI, an individual, REBECCA<br>BERRY, an individual, and DOES 1            | That Date.            | Way 11, 2010                      |  |
| 20 | THROUGH 10, INCLUSIVE,  |                       |                                   |  |
| 21 | Cross-Defendants.   |                       |                                   |  |
| 22 |   | ]                     |                                   |  |
| 23 |   |                       |                                   |  |
| 24 |   |                       |                                   |  |
| 25 |   |                       |                                   |  |
| 26 |   |                       |                                   |  |
| 27 |   |                       |                                   |  |
| 28 |   |                       |                                   |  |
|    | 1   |                       | 1166                              |  |
|    | NOTICE OF LODGMENT IN SUPPORT OF PLAINTIE<br>DARRYL COTTON'S MOTION                 |                       |                                   |  |
|    |   | I O BAI UNGE LIG FE   |                                   |  |

Plaintiff, LARRY GERACI, hereby lodges the following documents as exhibits to this Notice of Lodgment ("NOL") in support of his Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens:

| Exhibit Description  | <b>Evidentiary Foundation</b>  |
|--|--|
| Ownership Disclosure Statement (Form DS-<br>318) signed by Darryl Cotton and Rebecca<br>Berry, dated October 31, 2016,                                   | Declaration of Larry Geraci, ¶ 8;<br>Declaration of Abhay Schweitzer, ¶ 5  |
| Written real estate purchase and sale agreement<br>between Larry Geraci and Darryl Cotton dated<br>November 2, 2016 (the "Nov 2nd Written<br>Agreement") | Declaration of Larry Geraci, ¶ 5   |
| Geraci's AT&T Call Detail  | Declaration of Larry Geraci, ¶ 10  |
| Email to Darryl Cotton from Firouzeh<br>Tirandazi, dated March 21, 2017 at 8:54 a.m.   | Declaration of Larry Geraci, ¶ 14  |
| Email to Larry Geraci from Darryl Cotton,<br>dated March 21, 2017 at 3:18 p.m.   | Declaration of Larry Geraci, ¶ 15  |
| Email to Firouzeh Tirandazi from Darryl<br>Cotton, dated March 21, 2017 at 3:25 p.m.   | Declaration of Larry Geraci, ¶ 16  |
| Text Message to Larry Geraci from Darryl<br>Cotton, dated November 16, 2016  | Declaration of Larry Geraci, ¶ 23  |
| Purchase and Sale Agreement between Darryl<br>Cotton and Richard John Martin II, dated<br>March 21, 2017   | Declaration of Michael R. Weinstein, ¶2  |
| April 10, 2018 FERRIS & BRITT<br>A Professional C  |  |
|  | Ownership Disclosure Statement (Form DS-<br>318) signed by Darryl Cotton and Rebecca<br>Berry, dated October 31, 2016,Written real estate purchase and sale agreement<br>between Larry Geraci and Darryl Cotton dated<br>November 2, 2016 (the "Nov 2nd Written<br>Agreement")Geraci's AT&T Call DetailEmail to Darryl Cotton from Firouzeh<br>Tirandazi, dated March 21, 2017 at 8:54 a.m.Email to Larry Geraci from Darryl Cotton,<br>dated March 21, 2017 at 3:18 p.m.Email to Firouzeh Tirandazi from Darryl<br>Cotton, dated March 21, 2017 at 3:25 p.m.Text Message to Larry Geraci from Darryl<br>Cotton, dated November 16, 2016Purchase and Sale Agreement between Darryl<br>Cotton and Richard John Martin II, dated<br>March 21, 2017April 10, 2018FERRIS & BRITT |

Michael R. Weinstein By:

Michael R. Weinstein Scott H. Toothacre Attorneys for Plaintiff and Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

1167

2

22

23

24

25

26

27

| Sa   | evelopment Services<br>22 First Ave., MS-302<br>an Diego, CA 92101<br>19) 446-5000   | Owners  | hip Disclosure<br>Statemen  |
|--|--|---|---|
| Approval Type: Check a   | appropriate box for type of approval (s) reques<br>opment Permit Site Development Permit<br>re Map Vesting Tentative Map Map W   | Planned Development Permit X C  | oastal Development Permit<br>onditional Use Permit<br>Other   |
| Project Title  | e map 1 vealing remaine map 1  |   | roject No. For City Use Only  |
| Federal Blvd. MMC  | °C.  |   |   |
| Project Address:   |  |   |   |
|  | , San Diego, CA 92114  |   |   |
| birbiredena bird.  | , ball bidgo, off farth  |   |   |
| 122  |  | W. 1  |   |
|  | ed when property is held by Individual<br>Disclosure Statement, the owner(s) acknowle  |   |   |
| on the Assistant Executi   |  | Olly Detrough Made, The scollaged is see  | penalities for notifying the Draigat  |
| Development Agreement<br>Manager of any changes is<br>the Project Manager at le<br>oformation could result in<br>Additional pages attact<br>Name of Individual (Iy)  | 1 13   | s being processed or considered. Change<br>n the subject property. Failure to provide<br>Name of Individual (type or print)   | is in ownership are to be given to<br>accurate and current ownership  |
| Development Agreement<br>Manager of any changes is<br>the Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ly<br>Darryl Cotton   | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched TYes No<br>pe or print):   | s being processed or considered. Change<br>n the subject property. Failure to provide<br>Name of Individual (type or print,<br>Rebecca Berry  | is in ownership are to be given to<br>accurate and current ownership  |
| Development Agreement<br>Manager of any changes is<br>the Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ty<br>Darryl Cotton   | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched <b>Yes No</b>  | s being processed or considered. Change<br>n the subject property. Failure to provide<br>Name of Individual (type or print)<br>Rebecca Berry<br>Owner X Tenant/Lessee   | is in ownership are to be given to<br>accurate and current ownership  |
| Development Agreement<br>Manager of any changes i<br>he Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ly<br>Darryl Cotton   | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched TYes No<br>pe or print):   | s being processed or considered. Change<br>n the subject property. Failure to provide<br>Name of Individual (type or print,<br>Rebecca Berry  | is in ownership are to be given to<br>accurate and current ownership  |
| Development Agreement<br>Manager of any changes i<br>he Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ly<br>Darryl Cotton<br>X Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:   | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched TYes No<br>pe or print):   | s being processed or considered. Change<br>n the subject property. Failure to provide<br>Name of Individual (type or print,<br>Rebecca Berry<br>Cowner [X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:   | is in ownership are to be given to<br>accurate and current ownership  |
| Development Agreement<br>Manager of any changes is<br>the Project Manager at le<br>oformation could result in<br>Additional pages attact<br>Name of Individual (typ<br>Darryl Cotton<br>X Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Diego Ca 92114<br>Phone No:  | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched TYes No<br>pe or print):   | s being processed or considered. Change<br>n the subject property. Failure to provide<br>Name of Individual (type or print,<br>Rebecca Berry<br>Cowner X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Dicgo / Ca / 92122<br>Phone No:   | is in ownership are to be given to<br>accurate and current ownership  |
| Development Agreement<br>Manager of any changes i<br>he Project Manager at le<br>nformation could result in<br>Additional pages attact<br>Name of Individual (ly<br>Darryl Cotton<br>IX Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Diego Ca 92114<br>Phone No:<br>(619/)954-4447  | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched TYes No<br>pe or print):<br>nt/Lessee Redevelopment Agency<br>Fax No   | s being processed or considered. Change<br>in the subject property. Failure to provide<br>Name of Individual (type or print),<br>Rebecca Berry<br>Cowner [X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Dicgo / Ca / 92122<br>Phone No:<br>8589996882  | is in ownership are to be given to<br>accurate and current ownership<br>):<br>Redevelopment Agency  |
| Manager of any changes i<br>he Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ty)<br>Darryl Cotton<br>X Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Diego Ca 92114<br>Phone No:  | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched <b>Yes No</b><br>pe or print):<br>n/Lessee <b>Redevelopment Agency</b>   | s being processed or considered. Change<br>n the subject property. Failure to provide<br>Name of Individual (type or print,<br>Rebecca Berry<br>Cowner X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Dicgo / Ca / 92122<br>Phone No:   | is in ownership are to be given to<br>accurate and current ownership<br>):<br>TRedevelopment Agency<br>Fax No:                            |
| Development Agreement<br>Manager of any changes i<br>the Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ty<br>Darryl Cotton<br>IX Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Diego Ca 92114<br>Phone No:<br>( 619 / 954-4447<br>Signature:  | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched <b>Yes No</b><br>pe or print):<br>nt/Lessee <b>Redevelopment Agency</b><br>Fax No<br>Date:<br>10-31-2016   | s being processed or considered. Change<br>in the subject property. Failure to provide<br>Name of Individual (type or print),<br>Rebecca Berry<br>Cowner [X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Dicgo / Ca / 92122<br>Phone No:<br>8589996882  | Fax No:<br>Date:<br>10-31-2016  |
| Development Agreement<br>Manager of any changes i<br>the Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ly<br>Darryl Cotton<br>IX Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Diego Ca 92114<br>Phone No:<br>( 619 )954-4447<br>Signature:<br>Hander Street Address<br>( 619 )954-4447   | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched <b>Yes No</b><br>pe or print):<br>nt/Lessee <b>Redevelopment Agency</b><br>Fax No<br>Date:<br>10-31-2016   | s being processed or considered. Change<br>In the subject property. Failure to provide<br>Name of Individual (type or print)<br>Rebecca Berry<br>Cowner [X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Diego / Ca / 92122<br>Phone No:<br>8589996882<br>Signature :<br>Mateodor 45000<br>Name of Individual (type or print)  | Fax No:<br>Date:<br>10-31-2016  |
| Development Agreement<br>Manager of any changes i<br>he Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ly<br>Darryl Cotton<br>IX Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Dicgo Ca 92114<br>Phone No:<br>( 619 )954-4447<br>Signature:<br>Additional pages attact<br>Phone No:<br>( 619 )954-4447   | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched <b>Yes No</b><br>pe or print):<br>nt/Lessee <b>Redevelopment Agency</b><br>Fax No <sup>-</sup><br>Date:<br>10-31-2016<br>pe or print):                 | s being processed or considered. Change<br>In the subject property. Failure to provide<br>Name of Individual (type or print)<br>Rebecca Berry<br>Cowner X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Diego / Ca / 92122<br>Phone No:<br>8589996882<br>Signature :<br>MALLOOM AMM  | Fax No:<br>Date:<br>10-31-2016  |
| Development Agreement<br>Manager of any changes is<br>the Project Manager at le<br>oformation could result in<br>Additional pages attact<br>Name of Individual (ty)<br>Darryl Cotton<br>X Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Diego Ca 92114<br>Phone No:<br>( 619 )954-4447<br>Signatura:<br>Name of Individual (ty)<br>Name of Individual (ty)<br>Street Address:  | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched <b>Yes No</b><br>pe or print):<br>nt/Lessee <b>Redevelopment Agency</b><br>Fax No <sup>-</sup><br>Date:<br>10-31-2016<br>pe or print):                 | s being processed or considered. Change<br>In the subject property. Failure to provide<br>Name of Individual (type or print),<br>Rebecca Berry<br>Cowner [X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Diego / Ca / 92122<br>Phone No:<br>8589996882<br>Signature :<br>Mateodo Mateodo<br>Name of Individual (type or print)<br>Cowner [Tenant/Lessee [<br>Street Address:                          | is in ownership are to be given to<br>accurate and current ownership<br>):<br>Fax No:<br>Date:<br>10-31-2016                              |
| Development Agreement<br>Manager of any changes i<br>the Project Manager at te<br>information could result in<br>Additional pages attact<br>Name of Individual (ty<br>Darryl Cotton<br>IX Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Diego Ca 92114<br>Phone No:<br>( 619 )954-4447<br>Signature :<br>I ( 619 )954-9447<br>Signature :<br>I ( 619 )956<br>Signature | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched <b>Yes No</b><br>pe or print):<br>nt/Lessee <b>Redevelopment Agency</b><br>Date:<br>10-31-2016<br>pe or print):<br>VLessee <b>Redevelopment Agency</b> | s being processed or considered. Change<br>n the subject property. Failure to provide<br>Name of Individual (type or print,<br>Rebecca Berry<br>\[Downer [X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Diego / Ca / 92122<br>Phone No:<br>8589996882<br>Signature :<br><i>MALEOON JONA</i><br>Name of Individual (type or print)<br>\[Downer [Tenant/Lessee [<br>Street Address:<br>City/State/Zip. | s in ownership are to be given to<br>accurate and current ownership<br>):<br>Fax No:<br>Date:<br>10-31-2016<br>):<br>Redevelopment Agency |
| Development Agreement<br>Manager of any changes i<br>the Project Manager at le<br>information could result in<br>Additional pages attact<br>Name of Individual (ty)<br>Darryl Cotton<br>IX Owner Tenur<br>Street Address:<br>6176 Federal Blvd<br>City/State/Zip:<br>San Diego Ca 92114<br>Phone No:<br>( 619 )954-4447<br>Signatura:<br>Name of Individual (ty)<br>Name of Individual (ty)<br>Street Address:   | n ownership during the time the application is<br>ast thirty days prior to any public hearing or<br>a delay in the hearing process.<br>ched <b>Yes No</b><br>pe or print):<br>nt/Lessee <b>Redevelopment Agency</b><br>Fax No <sup>-</sup><br>Date:<br>10-31-2016<br>pe or print):                 | s being processed or considered. Change<br>In the subject property. Failure to provide<br>Name of Individual (type or print),<br>Rebecca Berry<br>Cowner [X Tenant/Lessee<br>Street Address:<br>5982 Gullstrand St<br>City/State/Zip:<br>San Diego / Ca / 92122<br>Phone No:<br>8589996882<br>Signature :<br>Mateodo Mateodo<br>Name of Individual (type or print)<br>Cowner [Tenant/Lessee [<br>Street Address:                          | is in ownership are to be given to<br>accurate and current ownership<br>):<br>Fax No:<br>Date:<br>10-31-2016                              |

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services Upon request, this information is available in alternative formats for persons with disabilities.

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larty Geraci

rryl Cotton

| ACKNOWLEDGMEI  | ŃT  |
|--|---|
| A notary public or other officer completing this<br>certificate verifies only the identity of the individual<br>who signed the document to which this certificate is<br>attached, and not the truthfulness, accuracy, or<br>validity of that document.   |   |
| State of California<br>County of <u>San Diezu</u> )  |   |
| On <u>November 2, 2010</u> before me, <u>Jess</u> (insert r  | CA Newell Notary Public   |
| personally appeared <u>DAVIVI</u> Colling on who proved to me on the basis of satisfactory evidence to be subscribed to the within instrument and acknowledged to me his/her/their authorized capacity(ies), and that by his/her/the person(s), or the entity upon behalf of which the person(s) a | e the person(s) whose name(s) is/are<br>e that he/she/they executed the same in<br>eir signature(s) on the instrument the |
| I certify under PENALTY OF PERJURY under the laws of th<br>paragraph is true and correct.  | ne State of California that the foregoing   |
| WITNESS my hand and official seal.   | JESSICA NEWELL<br>Commission # 2002598<br>Notary Public - California<br>San Diego County<br>My Comm. Expires Jan 27, 2017 |
| Signature for Null (Seal)  |   |

.



TAX AND FINANCIAL CENTER 5402 RUFFIN RD STE 200 SAN DIEGO, CA 92123-1301

Page: A-87 of 181 Bill Cycle Date: 11/02/16 - 12/01/16 Account: 835642301 Foundation Account: FAN 02761582 Invoice: 835642301X12092016

Airtime

Charges

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0,00

0.00

0.00

0.00

0.00

0.00

0.00

0,00

0.00

0.00

0.00

0.00

0.00

0,00

0,00

0.00

0.00

0.00

0,00

0,00

0.00

0.00

0,00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

LD/Add1

Charges

0.00

0.00

0.00

0,00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0,00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0,00

0.00

0.00

0.00

0.00

0,00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

Visit us online at: www.att.com/business

| 0             |           |  |       | 5-4040       | -       |         | Time    | Place<br>Called | Number Called                    | Rate<br>Code | Feature<br>Code |
|---------------|-----------|--|-------|--------------|---------|---------|---------|-----------------|----------------------------------|--------------|-----------------|
| 0             |           | TAX AND  | FINAN | ICIAL CENTER | 4       |         |         | , 11/03         | THE PARTY                        |              |                 |
|               | 00        |  |       |              |         |         | 02:27p  | INCOMI CL       | 619-                             | SDDV         |                 |
| all D         | Detail    | _  |       |              |         |         | 02:29p  | LA JOL CA       | 858-850.00100                    | SDDV         |                 |
|               | Place     |  | Rate  | Feature      | Airtime | LD/Add1 | 02:38p  | LA JOL CA       | 858-                             | SDDV         |                 |
| ime           | Called    | Number Called  | Code  | Code Min     | Charges | Charges | 02:43p  | ESCOND CA       | 760-                             | SDDV         |                 |
| ednesd        | ay, 11/02 | Construction of the local division of the lo |       |              |         |         | 03:03p  | INCOMI CL       | 858-811.011                      | SDDV         |                 |
| 8:48a         | SNDG S CA | 619-   | SDDV  | 2            | 0,00    | 0.00    | 03:11p  | INCOMI CL       | 619-                             | SDDV         |                 |
| 9:01a         | LA JOL CA | 858-200  | SDDV  | 4            | 0.00    | 0.00    | 04:19p  | CORONA CA       | 619- <b>BEDLOTED</b>             | SDDV         |                 |
| 9:04a         | LA JOL CA | 858-   | SDDV  | 2            | 0.00    | 0.00    | 05:21p  | INCOMI CL       | 619- CEDICITED                   | SDDV         |                 |
| 9:06a         | SNDG S CA | 619-   | SDDV  | 2            | 0.00    | 0.00    | 05:42p  | INCOMI CL       | 619-                             | SDDV         |                 |
| 9:09a         | SNDG M CA | 858-3400 4000  | SDDV  | 15           | 0.00    | 0.00    | 05:44p  | INCOMI CL       | 619- <b>SEDICETE</b>             | SDDV         |                 |
| 1:12p         | SNDG M CA | 858-   | SDDV  | 6            | 0.00    | 0.00    | 05:45p  | INCOMI CL       | 858-                             | SDDV         |                 |
| 1:18p         | CORONA CA | 619- <b>2010</b> 4 9 10  | SDDV  | 12           | 0,00    | 0.00    | 05:49p  | SNDG H CA       | 858-                             | SDDV         |                 |
| 1:30p         | INCOMI CL | 619-954-4447   | SDDV  | 11           | 0.00    | 0.00    | 05:52p  | CORONA CA       | 619                              | SDDV         |                 |
| 1:50p         | SNDG S CA | 619-100000000000000000000000000000000000   | SDDV  | 2            | 0,00    | 0.00    |         | CORONA CA       | THE DAY OF THE                   | SDDV         |                 |
| 1:52p         | SNDG S CA | 619-954-4447   | SDDV  | 2            | 0.00    | 0.00    | 05:55p  |                 | 619-<br>858-                     |              |                 |
| 1:55p         | INCOMI CL | 858-   | SDDV  | 2            | 0.00    | 0.00    | 06:06p  | INCOMI CL       | and the second day of the second | SDDV         |                 |
| 12:12p        | SNDG S CA | 619-   | SDDV  | 2            | 0.00    | 0.00    | 06:44p  | INCOMI CL       | 858-                             | SDDV         |                 |
| 12:12p        | LA JOL CA | 858-86-96-66   | SDDV  | 3            | 0.00    | 0.00    | 07:19p  | INCOMI CL       | 858-860.0000                     | SDDV         |                 |
|               | SNDG S CA | 619-   | SDDV  | 5            | 0.00    | 0.00    | 07:28p  | INCOMI CL       | 858-                             | SDDV         |                 |
| 2:17p         | INCONI CL | 858-   | SDDV  | 1            | 0.00    | 0.00    | 08:00p  | LA JOL CA       | 858-                             | SDDV         |                 |
|               |           | 619-   | SDDV  |              |         |         | 08:01p  | LA JOL CA       | 858-DEDUCTED                     | SDDV         |                 |
| 2:27p         | SNDG S CA |  |       |              | 0.00    | 0.00    | 08:27p  | LA JOL CA       | 858- <b>11 11 11</b>             | SDDV         |                 |
| 2:36p         | INCOMI CL | 619-   | SDDV  | 1            | 0.00    | 0.00    | 08:48p  | CORONA CA       | 619-                             | SDDV         |                 |
| 2:45p         | CORONA CA | 619- <b>5-1</b> 40-50  | SDDV  | 3            | 0.00    | 0.00    | 10:03p  | INCOMI CL       | 619-                             | SDDV         |                 |
| 2:47p         | SNDG L CA | 858-   | SDDV  | 3            | 0.00    | 0.00    | 10:16p  | SNDG M CA       | 858-                             | SDDV         |                 |
| 03:15p        | INCOMI CL | 858-   | SDDV  | 5            | 0.00    | 0.00    | Friday, | 11/04           |                                  |              |                 |
| )3:20p        | CORONA CA | 619-   | SDDV  | 2            | 0.00    | 0.00    | 09:14a  | SNDG M CA       | 858-2204                         | SDDV         |                 |
| )3:21p        | INCOMI CL | 619- <b>14-14-14</b>   | SDDV  | 2            | 0.00    | 0.00    | 09:38a  | LA JOL CA       | 858-                             | SDDV         |                 |
| 13:23p        | CORONA CA | 619-   | SDDV  | 2            | 0.00    | 0.00    | 09:53a  | SNDG S CA       | 619-                             | SDDV         |                 |
| 13:24p        | SNDG M CA | 858-   | SDDV  | 7            | 0.00    | 0.00    | 10:528  | LA JOL CA       | 858-220,000                      | SDDV         |                 |
| 3:31p         | ESCOND CA | 760-   | SDDV  | 1            | 0.00    | 0.00    | 10:53a  | INCOMI CL       | 858-                             | SDDV         |                 |
| 3:32p         | INCOMI CL | 619- <b>14-10-1</b>  | SDDV  | 9            | 0.00    | 0.00    | 11:02a  | INCOMI CL       | 619-                             | SDDV         |                 |
| 3:41p         | SNDG M CA | 858-   | SDDV  | 1            | 0,00    | 0.00    | 12:06p  | ESCOND CA       | 760-20000000                     | SDDV         |                 |
| 3:45p         | BLOCKED   | 000-   | SDDV  | 1            | 0.00    | 0.00    | 12:14p  | SNDG M CA       | 858-                             | SDDV         |                 |
| 4:05p         | INCONI CL | 619-00-00-00-00-00-00-00-00-00-00-00-00-00   | SDDV  | 2            | 0.00    | 0.00    | 12:20p  | CORONA CA       | 619-                             | SDDV         |                 |
| 4:15p         | INCOMI CL | 619-   | SDDV  | 2            | 0.00    | 0.00    | 12:36p  | INCOMI CL       | 405-                             | SDDV         |                 |
| 4:16p         | LA JOL CA | 858-   | SDDV  | 1            | 0.00    | 0.00    | 12:30p  | SNDG S CA       | 619-                             | SDDV         |                 |
| 4:17p         | SNDG S CA | 619-   | SDDV  | 5            | 0.00    | 0.00    |         |                 |                                  |              |                 |
| 4:28p         | INCONI CL | 619-   | SDDV  | 9            | 0.00    | 0.00    | 12:37p  | INCOMI CL       | 619-                             | SDDV         |                 |
| 4:39p         | INCONI CL | 702-   | SDDV  | 1            | 0.00    | 0.00    | 12:53p  | INCOMI CL       | 714-                             | SDDV         |                 |
| 4:44p         | INCONT CL | 917-   | SDDV  | 1            | 0.00    | 0.00    | 12:58p  | INCOMI CL       | 714-10030110                     | SDDV         |                 |
| 7:09p         | LA JOL CA | 858-   | SDDV  | 6            | 0.00    | 0.00    | 01:08p  | LA JOL CA       | 858-                             | SDDV         |                 |
| 100 March 100 | y, 11/03  |  | 0001  | 0            | 0.00    | 4.44    | 01:10p  | EL CAJ CA       | 619-                             | SDDV         |                 |
| 8:59a         | INCONI CL | 858-   | SDDV  | 4            | 0.00    | 0.00    | 01:22p  | INCOMI CL       | 714-PEDLOCIED                    | SDDV         |                 |
| 9:348         | SNDG M CA | 858-   | SDDV  | 14           | 0.00    | 0.00    | 02:39p  | INCOMI CL       |                                  | SDDV         |                 |
| 9:48a         | SNDG L CA | 858-   | SDDV  | 10           | 0.00    |         | 02:42p  | OKLA C OK       | 405-SED.UCTED                    | SDDV         |                 |
| 1:09a         | SNDG M CA | 858-   | SDDV  | 3            |         | 0.00    | 03:06p  | SNDG M CA       | 858-                             | SDDV         |                 |
| 2:40p         |           | 619-954-4447   | SDDV  |              | 0.00    | 0.00    | 03:08p  | OKLA C OK       | 405-                             | SDDV         |                 |
|               | SNDG S CA |  |       | 3            | 0,00    | 0.00    | 03:09p  | CORONA CA       | 619-                             | SDDV         |                 |
| 2:43p         | LA JOL CA | The second second second second second second second second second second second second second second second se  | SDDV  | 6            | 0.00    | 0.00    | 03:11p  | INCOMI CL       | 619-                             | SDDV         |                 |
| 1:25p         | INCOMI CL | 619-   | SDDV  | 1            | 0.00    | 0.00    | 03;33p  | INCOMI CL       | 619-                             | SDDV         |                 |
| 1:32p         | CORONA CA | 619-REDACTED   | SDDV  | 1            | 0,00    | 0.00    | 04:04p  | LA JOL CA       | 858-220.00000                    | SDDV         |                 |
| 1:33p         | CORONA CA | 619-34 (01-14)   | SDDV  | 8            | 0.00    | 0.00    | 05:05p  | INCOMI CL       | 619-                             | SDDV         |                 |
| 1:47p         | SNDG S CA | 619-   | SDDV  | 1            | 0.00    | 0.00    | 07:35p  | OCSD C CA       | 760-                             | SDDV         |                 |
| )1:55p        | INCONI CL | 858-   | SDDV  | 2            | 0.00    | 0.00    | 07:36p  | CORONA CA       | 619-                             | SDDV         |                 |
| 02:22p        | CORONA CA | 619-   | SDDV  | 1            | 0.00    | 0.00    | 07:37p  | OCSD C CA       |                                  | SDDV         |                 |

 To:
 dcotton@fleetsystems.net[dcotton@fleetsystems.net]

 Cc:
 Becky Berry[Becky@tfcsd.net]; brianna@bhpsonline.com[brianna@bhpsonline.com]

 From:
 Tirandazi, Firouzeh

 Sent:
 Tue 3/21/2017 8:54:01 AM

 Importance:
 Normal

 Subject:
 Federal Boulevard MMCC

 Received:
 Tue 3/21/2017 8:54:07 AM

Good Morning Mr. Cotton,

As a follow-up to our conversation this morning regarding your potential interest as property owner in withdrawing the above referenced CUP application, I just noticed that you are not the financial responsible party for the subject application. As such, I will also need written acknowledgement from Ms. Rebecca Berry, the applicant, who is the financial responsible party, to withdraw the subject CUP application.

As requested, here is a link to the 2/14 Council docket and supporting material - Item No. 51:\_ http://dockets.sandiego.gov/sirepub/pubmtgframe.aspx?meetid=3410&doctype=Agenda

Regards,

**Firouzeh Tirandazi** Development Project Manager City of San Diego Development Services Department

(619)446-5325 sandiego.gov



#### CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.



# M Gmail

## **Contract Review**

Tue, Mar 21, 2017 at 3:18 PM

Darryl Cotton <indagrodarryl@gmail.com> To: Larry Geraci <Larry@tfcsd.net>

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete' phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

**Darryl** Cotton

[Quoted text hidden]

 To:
 Tirandazi, Firouzeh[FTirandazi@sandiego.gov]

 Sc:
 Becky Berry[Becky@tfcsd.net]; brianna@bhpsonline.com[brianna@bhpsonline.com]; Larry Geraci[Larry@tfcsd.net]

 From:
 Darryl Cotton

 Sent:
 Tue 3/21/2017 3:25:24 PM

 Importance:
 Normal

 Subject:
 Re: PTS 520606 - Federal Blvd MMCC

 Received:
 Tue 3/21/2017 3:25:29 PM

Hello Firouzeh,

As a follow-up to our recent conversations, the potential buyer, Larry Gerasi (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property.

Thank you again for your help.

Best,

Darryl Cotton

On Thu, Mar 16, 2017 at 4:55 PM, Tirandazi, Firouzeh <<u>FTirandazi@sandiego.gov</u>> wrote:

Hello Mr. Cotton,

As requested, please find attached the Ownership Disclosure Statement signed by you (property owner), and Rebecca Berry (tenant/lessee) on October 31, 2016, submitted with the above referenced project application. I have copied Ms. Berry and the project Point of Contact (Bree Harris) on this email as well.

The project was deemed complete March 13, 2017 and is currently in the first review cycle. As property owner, if you wish to withdraw this application, please notify me in writing.

Regards,

Firouzeh Tirandazi

**Development Project Manager** 

City of San Diego

**Development Services Department** 

#### <u>(619)446-5325</u>

sandiego.gov



#### CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

Sent To: Daryl Fed B(16199544447) I just sent you an email they just need a quick signature and send back to me if you can get that back ASAP I'd appreciate it thank you

Nov 14, 2016 10:26:47

Nov 16, 2016 16:20 From: Nov 16, 2016 16:20:21 How goes it? Daryl Fed B(16199544447) Sent To: Nov 16, 2016 16:25:47 No news yet Daryl Fed B(16199544447) From: Did they accept the CUP application? Nov 16, 2016 16:26:37 Daryl Fed B(16199544447) We're still getting through them excepting the Sent To: Nov 16, 2016 16:30:19 Daryl Fed B(16199544447) property Once the property is approved then I believe we're Sent To: Nov 16, 2016 16:30:33 Daryl Fed B(16199544447) set to go Nov 18, 2016 11:58 From: Did you talk with matt on the cv dispensary? Nov 18, 2016 11:58:05 Daryl Fed B(16199544447) Nov 18, 2016 12:26 Yeah I did but he seriously didn't have any interest Sent To: Nov 18, 2016 12:26:07 Daryl Fed B(16199544447) because he met with the Chula Vista city attorney Sent To: All those places are gonna be close down Nov 18, 2016 12:26:13 Daryl Fed B(16199544447)

Nov 30, 2016 19:26

From: Daryl Fed B(16199544447)

\*

Greetings.

Nov 30, 2016 19:26:18

# 1183

**GER0516** 

|        | CALIFORNIA<br>ASSOCIATION COMMERCIAL PROPERTY PURCHASE AGREEMENT<br>AND JOINT ESCROW INSTRUCTIONS  |                       |
|--------|--|-----------------------|
| 1      | OF REATTORS (NON-RESIDENTIAL)<br>(CAR. Form CPA, Revised 12/15)  |                       |
| ate    | Prepared: 03/21/2017   |                       |
|        | FFER:  |                       |
| A      | THIS IS AN OFFER FROM Richard John Martin II   | 1 Buye                |
| 8      | X Individual(s), A Corporation, A Partnership, An LLC, An LLF, or 10ther<br>THE REAL PROPERTY to be acquired to 6176 Federal Blvd  | s.leater              |
|        | San Diego (Ctv), San Diego (Courty) Caltimiz 32114-1431/2, Caltin Assessor's Paradition 343  | -220.02-01 = vit anty |
| C      | THE PURCHASE PRICE offered is Two Million  |                       |
| D      | CLOSE OF ESCROW shall occur on X see Addendum 1 (duto) (or Days A  | ter Acceptance)       |
| E      | Buyer and Seller are referred to herein as the "Parties" Brokers are not Parties to this Agreement   |                       |
|        | GENCY:<br>, DISCLOSURE: The Parties each acknowledge receipt of a _X_Disclosure Regarding Real Estate Agency Re  | elations in i         |
|        | Form AD)   | eranor sir par ic i   |
| В      | CONFIRMATION: The following agency relationships are hereby confirmed for this transaction   |                       |
|        | Listing Agent N/A (Prait Firm Name) sithe a<br>the Seller exclusively, or both the Buyer and Seller.   | gen of reheak c       |
|        | Setting Apont N/A (Frant Fram Nac  | ne) ( ' not the si    |
|        | as the Listing Agent) is the agent of (check one) the Briver exclusivery, or the Seler exclusively, or tooth the B   | luver and Seller      |
| C      | POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each advisorietype recept of all X "Provide recept of all X" Provide recept of all X" Pro          | sizia Representa      |
| F      | of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Farm PRES)<br>INANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.   |                       |
| A      | INITIAL DEPOSIT: Deposit shall be in the amount of   |                       |
|        | (1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Eastrow Holder by electronic funds   |                       |
|        | transfer Cashier's check, Cipersonal check, other  |                       |
| 0      | after Acceptance (or   |                       |
|        | to the agent submitting the offer for to 3, made payable to  |                       |
|        | The deposit shall be held uncashed until Acceptance and then deposited   |                       |
|        | with Escrow Holder within 3 business days after Acceptance (or)<br>Deposit mecks given to agent shall be an original signed check and not a new  |                       |
| 0      | Note, Initial and increased deposit checks received by spent shall be recorded in Broker's trust function.)  |                       |
| B      | <ol> <li>INCREASED DEPOSIT: Buyer shall deposit with Excrow Holder an increased deposit in the amount of Single Singl</li></ol> | -                     |
|        | within Days After Acceptance (or   |                       |
|        | If the Parties agree to liquidated damages in this Agreement, they also agree to incurporate the increased<br>deposit into the liquidated damages amount in a separate liquidated damages clause (CIA,RI Form  |                       |
|        | R(D) at the time the increased deposit is delivered to Escrow Holder   |                       |
| C      | ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer  |                       |
|        | obtaining a loan. Written verification of sufficient funds to close this transaction (SIATTACHED to this uffer<br>or Buyer shall, within 3 (or ) Days After Acceptance. Deriver to Setter such verification  |                       |
|        | D. LOAN(S):  |                       |
| 1      | (1) EIRST LOAN: a the product of   | 1,800,90              |
|        | This loan will be conventional financing or Seller Enancing (C.A.R. Form SFA) assumed  |                       |
|        | financing (C.A.R. Form AFA) subject to financing. Other This<br>loan shall be at a fixed rate not to exceed to or, an adjustable rate loan with initial rate not   |                       |
|        | to exceed %. Regardless of the type of pain Buyer shall pay points not to exceed % of  |                       |
|        | the loan amount.   |                       |
|        | (2) SECOND LOAN in the amount of   | -                     |
|        | (C.A.R. Form AFA)  |                       |
|        | rate not to exceed to or an adjustable rate loan with milat rate not to exceed   |                       |
|        | Regardless of the type of loan, Buyer shall puy points not to exceed if all this loan amount   |                       |
| 6      | E. ADDITIONAL FINANCING TERMS: see attached Addundum 1   |                       |
|        | F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of  | 200,00                |
|        | to be deposited with Escrow Holder pursuant to Escrew Holder instructions  | 2.000.00              |
|        | C. PURCHASE PRICE (TOTAL):   | ant to paradraph"     |
| 0      | shall, within 3 (or) Days After Acceptance Deliver to Seller written verification of Beyer's down payment  | ert and closing s     |
|        | ( Verification attached.)  | <i>2</i>              |
| 30,0   | Search to hits 1x 11   | - 1                   |
| NO 201 | A REVISED 12/15 (PAGE 1 OF 11)<br>COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 1 OF 11)  | 57                    |
| CPA    |  |                       |

#### Property Address 6176 Federal Blvd, San Diego, CA 92114-1401

#### Dale, March 21, 2017

- 1. APPRAISAL CONTINGENCY AND REMOVAL. This Agreement is for X is NOT) contingent upon a written approval of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 145(3) in writing, remove the appraisal contingency or cancel this Agreement within 17 (or ) Days After Acceptance J. LOAN TERMS:

(1) LOAN APPLICATIONS: Writen 3 (or \_\_\_\_) Days After Acceptance, Suyer shall Deliver to Seller a letter from Buyers known or loan broker stating linat, based on a review of Buyer's written application and credit report. Buyer is prequalified or prespondiver for any NEW loan specified in paragraph 3D, if any loan specified in paragraph 3D is an adjustable rate lean, the pregunitheation cr preapproval letter shall be based on the qualitying rate, not the mitial loan rate, o 🗴 Letter attached (2) LOAN CONTINGENCY: Buyer shall act objectly and in good faith to obtain the designated loants). Buyers qualification

for the loan(s) specified above is a contingency of this Agricement unions otherwise egreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, than failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the Idan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, bulance of down payment and closing costs are not contingencies of this Agreement.

#### (3) LOAN CONTINGENCY REMOVAL

Withir 21 (or ) Days After Acceptance, Buyer shall, as specified in paragraph 18, in writing, remove the loan participe key at cancel this Agreement. If there is an appraisal contingency, removal of the loan confingency shall not be deemed removal of the appraisal contingency.

(4) X NO LOAN CONTINGENCY: Obtaining any loan specified above is NOT a contrigency of this Agreement. I Buyer does not obtain the loan and as a result Buyer does not purchase the Property. Selier may be entitled in Buyer's deposit or ether legal remodies

(5) LENDER LIMITS ON BUYER CREDITS: Any credit to Buyer from any source for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by purjer's lender ("Lender Allowable Credit') is less train the Contractual Credit then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (iii) in the absence of a separate written agreement between the Parties, there shall be no automatic additionent to the purchase price to make up for the difference between the Contractual Great and the Contractu

K. BUYER STATED FINANCING. Selier is relying on Briver's representation of the type of financing specified including but no limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Solier has agreed to a specific closing date, purchase price and to sell to Beyer in refance on Buyer's devenant concerning financing. Buyer shall pursue the Inancing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any framenus other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the objection to purchase the Property and close escrow as specified in this Agreement.

#### 4. SALE OF BUYER'S PROPERTY:

- A. This Agreement and Buyer's ability to obtain linancing are NOT contingent upon the sale of any property owned by Euger
- This Agreement and Buyer's ability to obtain if anoing are contingent upon the sale of property owned by Buyer as specificity ORB in the attached addendum (C.A.R. Form COP)

#### 5. ADDENDA AND ADVISORIES.

| X Addend in # 1 ICAR Form ADM                         |
|---|
| Court Confirmation Addendum IC A.R. Form CCA          |
| A B Form SWPI)  |
| Otrat   |
| X Buyer's Inspection Advisory (C.A.R. Form BiA)       |
| Statewide Buyer and Seller Advisory (C.A.R. Form SBSA |
| REO Advisory (C.A.R. Form REO)                        |
| SiA) Other  |
|   |

OTHER TERMS: see attached Addendum 1, is incorporated as part of contract.

#### 7. ALLOCATION OF COSTS

A. INSPECTIONS, REPORTS AND CERTIFICATES, Unless otherwise agreed, in whong this paragraph any determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; if does not determine who is to pay for any work recommended or identified in the Report

(1) Buver Seller shall pay for a natural hazard zone disclosure report, including tax convictionental Other

- prepared by (2) Buyer Seller shall pay for the following Report
- Dieba.nc 21. (3) Buyer Seller shall pay for the tollowing Report prepared by

#### B. GOVERNMENT REQUIREMENTS AND RETROFIT:

(1) Buyur Seller shall pay fer smoke alorm and carbon monoxide device installation and water neater praced, if required by Law, Phor to Close Of Escrow ('COE'). Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exernin:

. Buyer's Initials (X /// )( CPA REVISED 12/16 (PAGE 2 OF 11)

Secor 4 1-0.313 X



186

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 2 OF 11) Vinduced with tablement by actually in Unit's Ender May Road Finance According to the

at to Interest

### Property Address: 6176 Federal Blvd, San Diego, CA 92114-1401

#### Date March 21, 2017

(2) (i) Buyer Seller shall pay the cost of compliance with any other inclumum translatory government insportions into reports if required as a condition of dosing escrow under any Law

(ii) Buyer Seller shall pay the cest of compliance with any other minimum mandatory dovernment let standards required as a condition of closing option under any Law, whether the work is required to be completed patient or other GOE (iii) Buyer shall be provided, within the time specified in paragraph 18A, a copy of any required power mem conducted or point-of-sale inspection record propared persuant to this Agreement or in aidiopation of this sale of the Property

#### C ESCROW AND TITLE

- (1) (0) Buyer Seller shall pay escrew fee
   (b) Escrew Holder shall be

(c) The Parties shall, within 5 for 1 Days After receipt, sign and return Estima Holdun's penetal provisions

- (2) (a) \_\_\_\_\_\_Buyer\_\_\_\_Seller shall pay for owner's title insuration policy specified in paragraph 17E (b) Owner's title policy to be issued by
- (Buyer shall buy for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing in

### D. OTHER COSTS.

- Buyer Soller shall bay County transfer (as or fee)
   Buyer Seller shall bay City transfer tax or fee
   Buyer Seller shall bay Cwhers' Association ("QA") transfer fee
- (4) Seller shall pay OA lees for preparing all documents required to be delivered by Civil Code \$4525
- Buyer Seller shall pay GA fees for proparing all documents other than those required by Civil Lode \$4525. (5)
- (6) Buyer to pay for any HOA certification fee.
- Buyer Seller shall pay for any private transfer fee Buyer Seller shall pay for Buyer Seller shall pay for (7)
- (8)
- (2)

#### 5. ITEMS INCLUDED IN AND EXCLUDED FROM SALE.

A. NOTE TO BUYER AND SELLER: Items listed as included on excluded in the MLS livers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph # B, C or D,

#### B. ITEMS INCLUDED IN SALE:

- (1) All EXISTING fixtures and fillings that are attached to the Property.
- (2) EXISTING electrical mechanical lighting, plumbing and teasing latures cealing late, implace inserts, gas logs and grates, order power systems, built-in appliances, whom and door screens, swrings, shutlers, whoch of verings attached ther overings television aniennas, satellite dishes, ar coolersiconditioners, poclispa equipment, garage door scenersiremete custrols, maigles neground landscaping, trees shrubs, water features and four tank, water rofusions, water punfiers, security systems a unre-
- (3) A complete inventory of all personal property of Seller currently used in the operation of the Property and reduced in the purchase price shall be delivered to Boyer within the time specified in paragraph 184.
- (4) Seller represents that all items included in the purchase since and unlists otherwise sociality or identified pursuant to a But owned by Schot, Within the time specified in paragraph 15A. Sefur shall give Buyer a list of totules not owned by Sefler
- (5) Soller shall deliver ute to the personal property by Bill of Sale, free and clear of all liens and recombrances, and without seller warranty of condition recordless of value.
- (6) As additional security for any note in favor of Seller for any part of the purchase crice. Buyer shall execute a LICC+ Financing Statement to be field with the Secretary of State counting the personal property insuder as the parchase replacement thereof, and insurance proceeds.
- (7) LEASED OR LIENED ITEMS AND SYSTEMS: Soller shall, within the time specified in paragraph 18A ... discuss to Boyer If any item or system specified in paragraph 98 or otherwise included in the sale is reased or not owned by Seller (1) specifically subject to a lien or other encombrance, and (ii) Deriver to Buyer all written materiels (such as lesse, warrants) etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to actual the Property subject ... any such lien or encombrance, is a continency in favor of Buyer and seller as splat field = paragraph \*85 and G

#### C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following terms are encluded from sale

#### D. OTHER ITEMS:

(1) Existing integrated phone and automation systems, including necessary components such as intranel wet invittely connected hardware or devices, control units (other than non-cedicated mobile devices, electronics and conductors, and 

#### 9. CLOSING AND POSSESSION:

- CLOSING AND POSSESSION: A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property: Possession shall be delivered to Buyer (i) at 6 PM or ( A. Seller-occupied or vacant property (i) at 6 PM or ( A. Seller-occupied or vacant property (i) at 6 PM or ( A. Seller-occupied or vacant property (i) at 6 PM or ( A. Seller-occupied or vacant property (i) at 6 PM or ( A. Seller-occupied or vacant property (i) at 6 PM or ( A. Seller-occupied or vacant property (i) at 6 PM or ( A. Seller-occupied or vacant property (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or ( A. Seller-occupied or (i) at 6 PM or AM PY --- the date to min calendar days After Close Of Excraw, or (w) \_at Close Of Escraw, (ii) no later than
- B. Seller Remaining in Possession After Close Of Escrow: If Soller has the right to remain in possession after Close Of Escrow: If Soller has the right to remain in possession after Close Of Escrow: to the Parties are advised to sign a separate occupancy agreement such as C.A.R. Form CL and in the Parties are advisually consult with their insurance and legal advisors for information, about liability and damage or injury to dersons and personal and real property, and (iii) Buyer is advised to consult with Bover's lender about the impact of Soller's occupancy on Buyer's form
- C. Tenant Occupied Units. Possession and occupancy subject to the norts of tenants under existing leases and be duringed to Buyer on Close Of Escruw
- D At Close Of Escrew: (I) Seller assigns to Buyer any assignable numarity rights for items incluyed in the sure and (ii) Seller new Deliver to Buyer available Copies of any such warrantics, Brokers cannot and will not determine/the assignability of an examinities.

Setan's Ird doil X

Buyers Intas X COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 3 OF 11) ner ath splanne by goings 1877 and the basis have through the statistics



al Letters

#### Property Address' 6176 Federal Blvd, San Diego, CA 92114-1401

Da'r March 21, 2017

- E. At Close Of Escrow, unless otherwise agreed in writing. Seller shall provide keys passwords, usdes and/or meanu to ponate all locks, matboxes, security systems, alarms, home automation systems and intronet and internet connected devices interiod to the porchase price and garage door openers. If the Property is a condomination or located in a common merest subclusion. Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.
- SECURITY DEPOSITS: Security deposits, if any to the extent they have not been applied by Select & accordance with any relicit egreement and current Law, shall be transferred to Buyer on Close Of Estraw, Select shall notify each tenant, in compliance with the Card Code.

#### 11. SELLER DISCLOSURES:

- A. NATURAL AND ENVIRONMENTAL DISCLOSURES: Solier shall, within the time specified in paragraph 16, if required by Law (i) Deliver to Buyer cartinguake guides (and guestionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide an NHD disclose if the Property is located in a Special Flood Huzard Area. Potential Historia (he) dooing the required to real Potential Historia (he) disclose any other violants and provide any other violants on required for hose zones.
- B. ADDITIONAL DISCLOSURES: Within the time specified in paragraph \*8. Seiler shall Deliver to Boyer, in writing, the following disclosures, documentation and information
  - (1) RENTAL SERVICE AGREEMENTS: (i) All current eases rental agreements, service contracts, and other agreements pertaining to the operation of the Property and (ii) a rental statement including names of tenants rental rates period of rental, date of last rent increase, security deposits, rental concessions, rebates, or other banefits if any and a list of definition duration. Selier represents that no tenant is entitled to any concession rebate, or other benefit, except as set forth in these documents.
  - (2) INCOME AND EXPENSE STATEMENTS: The books and records, including a statement of income and expense for the 52 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of feneral and state income tax returns.
  - (3) TENANT ESTOPPEL CERTIFICATES: (if checked) Tenant estoppel certificates (C.A.R. Form TEO) complete by Seterior Soller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and m full farce and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist, and (iii) stating the amount of any prepaid rent or security deposit.
  - (4) SURVEYS, PLANS AND ENGINEERING DOCUMENTS: Copies of surveys plans, specifications and engineering documents, if any, in Seller's possession or control.
  - (5) PERMITS: If in Seller's possession. Copies of all permits and approvals concerning the Property, obtained from any governmental entity including, but not limited to, certificates of occupancy concilional use permits development plans, and licenses and permits pertaining to the operation of the Property.
  - (6) STRUCTURAL MODIFICATIONS: Any known structural additions or alterations to, or the installation, alteration, replacement of, significant components of the structure(s) upon the Propulty.
  - (7) GOVERNMENTAL COMPLIANCE: Any improvements, additions, alterations or recars made by Seller, or kitowrite Seller to have been made, without required governmental permits, final suspections, and approvals.
  - (8) VIOLATION NOTICES. Any notice of violations of any Law lifed or instreed against the Property and actually known to Sicher
  - (9) MISCELLANEOUS ITEMS: Any of the following, if actually known to Seller (i) any current pending lawsun(s investigationus, inguiry(ics), action(s), or other proceeding(s) affecting the Property or the right to use and occupy it. (ii) any unsatisfies, mechanics or materialman's len(s) affecting the Property and (iii) that any fenant of the Proceeding is the subject of a consciplicy.
- C. WITHHOLDING TAXES. Within the time specified in paragraph 18A, to avoid required withholding Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and Colifornia withholding Law. (C.A.R. Form AS or QS).
- D. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES. This notice is being provided simply to inform you that information about the general location of gas and hazardous figuid transmission dipelines is available to the public via the National Pipeline Mapping System (NPMS) internet Web site maintained by the United States Department of Transportation at http://www.npms.phmsa.dot.gov/. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and country on the NPMS Internet Web site.
- E. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES

(1) SELLER HAS: 7 (or ) Days After Acceptance to disclose to Buyer whether the Presenty is a condominant or is tanaled in a planned development or other common interest subdivision

(2) If the Property is a condominum or is located in a blanned development or other common interest subdivision. Seller has 3 (or \_\_\_\_\_) Days After Acceptance to request from the DA (CIAIK Form HCA1) (i) Copies of any documents required by Law (a) disclosure of any pending or anticipated claim or intigation by or against the DA (iii) a statement containing the total th and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months or DA minutes for regular and spheral meetings; and (v) the names and contact information of all OAs governing the Property (conectively, TCI Disclosures), Super statistication and policy interests and policy in the part of Disclosures is a contingency of this Agreement as specified in paragraph (BB(3) The Party specified in paragraph 7 as directed by encrow shall deposit funds into escrow or direct to DA or management comparity to pay for any of the aptive

Buyet's Initials (x CPA REVISED 12/15 PAGE 4 OF 11)

Seller's bullets (Y

LATE THEAL

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 4 OF 11)

Date March 21. 2017

- Property Address, 6176 Federal Blvd, San Diego, CA 92114-1401 12. CHURCHMENTAL SURVEY (F checked) Without C Days After Acceptance Bayer shell be provided a prase my noviconmental survey report paid for and obtained by | Baver | Seller, Buyer shall then, us specified in parapraph to remove the contragency or cancel the Agreement.
- 13. SUBSEQUENT DISCLOSURES: in the event Sever, prior to Close Of Evenew processes aware of adverse conditions materially affecting the Property or any material maccuracy in disclosures information or impresentations previously provided to Buyer of which Buver is otherwise unaware. Solici shall aromply Derver a solicequent or amended disclosure or notice in writing, thereing those news However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.

#### 14. CHANGES DURING ESCROW:

- A. Phor to Close Of Esclow, Solver may only engage in the following acts. I Proposed Changes's suggest to Buyer's rights in paragraph 14B (i) ront or loand any vacant unit or other part of the premiure. (ii) after, modify, or extend any existing rental or leave agreement (iii) noter into altur modey or calend any service contraction, or (IV) change the status of the condition of the Property
- Days prof to any Proposed Changes, Sever shall Deliver written house to Buyer of any Proposed Changes. B. (1) 7 (or
- (2) Within 5 (or \_\_\_\_) Days After receipt of such notice. Buyes, in writing may give Seller notice of Buyers on according the President Changes in which case Seller shall not more the Proposed Changes.
- 15 CONDITION OF PROPERTY: Unless chierwise agreed in writing (I) the thousany is sets in) AS-S' of the PRESENT provide concilient as of the date of Acceptance and (b) subject to Buyer's investigation month. (b) the theparty performance post sets andscaping and grounds, is to be maintained in substancely the same condition of on the date of Acceptonice and old to device and cersonal property not included in the sale shall be removed by Dinse Of Escrew
  - A Scient shall, within the time specified in paragraph 18A, DISCLOSE KNOWN MATERIAL FACTS AND SERECTS interesting the Property, including known maurance barrs with the past from years, and make any and at other or aclosures required to any
  - B. Buyer has the right to conduct Bayer Investigations of the property and an uper field in paragraph (TB, bayer upon marmaldiscovered in those investigations (ii) cannel this Agreement, or (ii) request that Setter make Repairs or take other set-or
  - C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important Property improvements may not be built according to code in compliance with current Law, or have had permits issued.

#### 16. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY

- A Beyer's acceptance of the condition of, and any other matter affecting the Property, is a contraction, of this Apreemant on succession in this paragraph and paragraph 18B. Within the time specifica in paragraph "5B(1) Buyer shat have that not not be buyer's expense unices binerwise agreed, to conduct inspersons, investigations, texts, surveys and other studies. Buyer investigations's including but not imited to, the right to (i) inspect for lead-based part and other lead-based part hazards (ii) inspect for which destroying press and organisms. Any inspection for wood destroying perits and organisms shall be aropared by a regenered Structure Pier." Control company; shall cover the main building and interhed structures, may cover detached structures, shall NOT herupa when tests of shower pans of upper linuel units unless the owners of property ballow the shower authorit, dias, NOT include Lind coverings and if the Property sia unit in a conditivitient or other common whited subdivision, the material time in the proseparate whitest and why exclusive-up areas being transferred, and shu NOT include common atems and and include a marth ("Pest Control Report") showing the friends of the company which she be separated into Sections for evident effectives ininfections (Section 1) and for bundleuns likely to lead to infection or infection (Section 2), (0)) every the registered are often or detabase, (by) present the ensurability of Boyan and the Property encluding the avalability and cost of ficod and for insertion, (v) inview and seek approval of leases that may need to be assumed by Boyer, and (vi) satisfy Duver as thisny matter spectrol attached Buyer's inspection Advisory (C.A.R. Form BIA). Without Selen's prior written consumt Buyer shall nemer make non-culsu to be made: (i) invasive or destructive Buyer Investigations except for minimally rives we testing required to properly a First Cantral Report or (II) inspections by any governmental building or zoning repreter or government emoloyee unless required by Lww
- B. Seller shall make the Property available for all Buyer tryestigations. Buyer that (i) as specified in paragraph (88 complete-Buyer investigations and either remove the contropency of concer this Agreement, and (iii) give Soler of no rest complete Copies of all such investigation reports ubtained by Buyer, which obligation shall survive the termination of this Agreement
- C. Seler shall have water, gas, electricity and all operable plot lights on for Buyer's Investigations or a through the date cosses, on made available to Buver
- D. Buyer indemnity and seller protection for entry upon property: Buyer and (i) keep the Property fee at a seel of here (ii) took? . demage ansing from Buyer Investigations and (iii) indemnify and hold Seller hamileus from a resulting kapaty darts der anda. camages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to catry, process of liability workers compensation and other applicable insurance, defending and protecting Baller from Fability for any inputes to persons or property occurring during any Buyar Investigations or work done on the Property at Buyer's process prior to Clube Of Excrew Seller & advised that particulations may be efforded Seller by recalding a "Notice of Non-People upby" (C.A.R. Ford NMR) for Buyer Investig them and main Jone on the Property at Buyer's detection. Buyer's detection a under this paragraph and harvour the formulation of this Agree most

#### 17 TITLE AND VESTING:

- A. Within the time specified in paragraph 13 Buyer shall be provided a surrent preliminary the report "Post-mary Report" The Preter many Report is only an offer by the file insurer to ssue a policy of the insurance and may not contain every demisihed ing title Buyers review of the Prelminary Report and any other matters which may affect title are a continuently of the Agreement and perities in paragraph 168 The company providing the Protoninary Report shall prior to issuing a Protoninary Report through a set of the General Index for all Sellers except bonks or other institutional tenders so ing properties they augures through foredul, the IPLC corporational and government entries. Seller shall within I Days After Acceptance in the Escreta Holder a completed Statement of Information.
- B. Title is taken in its present condition subject to all encumbrances, economics, covenants, conditions, restrictions, right, and utter matters, whether at record ar not, as of the date of Appendence except for (ii) monetars richs of record (which Series as a second in the date off unless Ruyer is assuming these obligations of taking the Property subject to this in fulgations init (b) these mothers which Subject has agreed to remove in writing.
- C. Within the time specified in paragraph 184. Seller has a duty to disclose to Buyer all matters krights to Seller affecting the whether of Buyers inmals 1 /

Separa Inmarki X

1189

1.76 Council

CPA REVISED 12 15 PAGE 5 OF 11) COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 5 OF 11) Produced will get and the rolling a 1577 F tops Wile R or Frank Men av 140

### Property Address 6176 Federal Blvd, San Diego, CA 92114-1401

Date. March 21, 2017

- D. At Close Cf Escrow, Boyer shall receive a grant deed conveying the for, for stock cooperative or long-term lease, an essignment of stock contribute or of Seller's leasehold interest) including oil, mineral and water rights if surrantly swhed by Seller. The shuk wast as designated in Buyer's supplemental escrue instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICAN1 LEGAL ENVI-TAX CONSEQUENCES, CONSULT AN APPROPRIATE PROFESSIONAL.
- E. Buyer shall receive a standard coverage owners CLTA policy of the insurance. An ALTA policy of the addition of endorsements may provide greater coverage for Buyer. A ble company, at Bover's recoust, can provide information about the availability desirability coverage, and cost of various tide insurance coverages and endorsements. If Buyer datires the coverage other than that required by this paragraph. Buyer shall instruct Escrow Holderin writing and shall pay any increase in cost.
- 18. TIME PERIODS: REMOVAL OF CONTINGENCIES. CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
  - A. SELLER HAS: 7 (or \_\_\_\_) Days After Acceptance to Deliver to Buyer all Reports, cisclosures and information for smart Solar in responsible under paragraphs 5A, 6, 7, 8B(7), 114, B, C, D and E, 12, 15A and 17A. Buyer after first Delivering to Seller in Nettoe to Seller to Ferform (CA.R. Form NSP) may cancel for Spreament if Seller has not Delivered the tams within the time specified.
    B. (1) BUYER HAS: 17 (or \_\_\_\_\_) Days After Acceptance unders otherwise apprect to sense to the tams within the time specified.
    - (1) BUYER HAS: 17 (or \_\_\_\_\_) Days After Acceptance, unless otherwise agreed in wriging, to (i) complete all Buyer Investigations reveal of disclosured reports, lease documents to be accurate to Buyer pursuant to press an 65(7) and other applicable information, which Buyer receives from Seller, and approve all methors effecting the Property.
    - (2) Within the time specified in perugraph 158(1), Buyer may request that Selier make repairs or take any other action regarding the Property (C.A.R. Form RR). Selier has no obligation to agree to or respond to (C.A.R. Form RRRR, Buyer's requests).
    - (3) By the end of the time specified in paragraph 188(1) for as otherwise specified in this Agreement, Buyer shall beliver the Seller a removal of the applicable contingency or cancellation. C.A.R. Form CR U. CC. of this Agreement, However, if any robot, disclosure or information for which Seller is responsible us not Delivered within the time specified in paragraph. 3A then Buyer has 5 (or \_\_\_\_\_) Days. After Delivery of any such items, or the time specified in paragraph. 188(1) which ever is fater, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
    - (4) Continuation of Contingency: Even after the end of the time specified in paragraph 166(1) and before Seler cancels if all all, pursuant to paragraph 18C, Buyer retains the right in writing to other it) remove remaining contingencies of fill cancel this Agreement based on a remaining contingency. Once Buyer's writen removal of all contingencies is Defunded to Scient Selfer may not cancel this Agreement pursuant to paragraph 18C(1).

#### C SELLER RIGHT TO CANCEL:

- (1) Seller right to Cancel; Buyer Contingencies: if, by the time specified in this Agreement, Buyer opes not Detter to Seller in terroval of the applicable contingency or cancellation of this Agreement, then Seller, after this Detvering to Buyer a Notice in Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller, shall authorize the return of supers, deposit except for fees incurred by Buyer.
- (2) Seller right to Cancel; Buyer Contract Obligations: Sefer, after first dational to Buyer a NBP, may cannel that Agreement 1 by the time specified in this Agreement, Buyer does not take the following action(a), (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good which deposited. (ii) Deliver a letter as required by paragraph 3J(1), (iii) Deliver verification as required by paragraph 3G or 3H or if Scient maxement, we integravely a transmission and integration provided by paragraph 3G or 3H, or (iv) in writing assume or accept bases or livers specified in EBI7, (v) Sign minimate a separate liquidated damages form for an increased deposities required by paragraph 3B and 2bb, or (vi) Provide evidence of authority to sign in a representative capacity as specified in paragraph 33. In such event, Seler that a cuborup the return of Buyer's deposit, except for free inputted by Buyer.
- D. NOTICE TO BUYER OR SELLER TO PERFORM. This NBP is NSP shall (i) be in writing (ii) the signed by the appraise Buyer of Seller, and (iii) give the other Party at least 2 (or \_\_\_\_\_\_) Days Attail Delivery or unlit the take specified in the appraise parameter and other base specified in the approximate parameter of the applicable action. A NBP or NSP may not be Delivered any owner than 2 Days Provide the other party to remove a contingency or cancel this Appearement or must an obligation specified in paragraph. In
- E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency, or carbellation right, unless otherwise specified in writing. Super shall conclusively be deemed to have (i) completed at Buyer investigations and services of reports and other applicable information and disclasures pertaining to that contingency or cancellation right. (ii) allocted to proceed with the transaction, and (iii) assumed at kability, responsibility and exponse for Reports or cancellation right. (ii) allocted to proceed with the transaction, and (iii) assumed at kability, responsibility and exponse for Reports or cancellation right or for metraphity to obtain financing.
- F. CLOSE OF ESCROW: Before Buyer or Selfer may cancel this Agreement for faultie of the other Party to close eacrow purchant to this Agreement, Buyer or Selfer must first Denser to the other Party a domand to close eacrow (CAR Form DOE). The DOE shall (i) be signed by the applicable Buyer or Selfer, and (ii) give the other Party at least 3 (or \_\_\_\_\_) Days After Delvery to close eacrow. A DOE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrew.
- G. EFFECT OF CANCELLATION ON DEPOSITS. If Buyer or Soler gives willien notice of cancellation currowint to "physical envicand to any to the party entitled to the fands, less less and costs incurred by that party. Fees and costs may be payable to service provides and vandors for services and products provided during escrew. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to excute mutual instructions to cancel the sale and escrew encoded below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrew, one Party may make a written demand the Earow Hinder for the deposition A. Form BORD or SORD) Escrew Holder upon receipt, and prompty debury not up of the other that decision to arbitration award. If ether Party fails to execute mutual instructions to cancel escrew, one Party may make a written demand the Earow Hinder for the deposition A. Form BORD or SORD) Escrew Holder upon receipt, and prompty debury not up of the other that deposition to be demand. Exerce Holder that deposition to have released for the Rely may cancel and up of the demand to be demand to have released for the Rely of the form any and the escrew Holder complex with the proceeding process, our Party shall be demand to have released for the Rely may cancel and and the depositions in the deposition and and depositions. A Party may be subject to a civil penalty of up to \$1,000 for relusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

Boner's Intents 1 X CPA REVISED 1215 (PAGE 6 OF 11)

Seller's month 1X

Ð

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 6 OF 11)

61.43.2.44

#### Property Address. 5176 Federal Blvd, San Diego, CA 92114-1401

#### Date March 21, 2017

- 19. REPAIRS: Repairs shall be completed pror to final vertication of concision unkess otherwise agrees in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complete with opplicable 1 wai including governmental permit, inspection and approval requirements. Recains shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials, it is orderstood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall (I) obtain involves and paid techops for Repairs performed by others (II) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs, and had prevents to Buyer prior to final vertication of conditor.
- 20 FINAL VERIFICATION OF CONDITION: Buyer shall have the right to make a final verification of the Property with n 5 (or j Days Prior to Close Of Excrew, NOT AS A CONTINGENCY OF THE SALE, but weldy to confirm, (i) the Property of maintained pursuant to paragraph 15, (ii) Repairs have been completed as agreed, and (iii) Selfer has complied with Selfer's other boll galaxies under this Agreement (C.A.R., Form VP).
- 21. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS: Unless otherwise agroup in writing the following fems shall be PAL's CURRENT and prorated between Buyer and Solidinas of Close Of Eacrow, real property taxes and assessments interest, reins OA regular, special, and emergency dues and assessments imposed prior to Close Of Eacrow, premients on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Nello-Roos and other Special Assessment Distort bonds and assessments that are now a lien. The following nones shall be assumed by Buyer WITHOUT CREDIT toward the purchase price, protected payments on Mello-Roos and other Special Assessment before provided assessments that are now a lien, but not yet due. Property will be reassessed upon change of exemption: Any supplemental tax bills shall be paid as follows. (i) for periods after Close Of Escrow, by Buyer, and (ii) for periods of the Close Of Escrew by Source of A Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROM, SHALL RE HANDLED DIRECTLY BETWEEN SUMER AND SENDER. Prove on shall be made based on a 30-cay monto.
- 22. BROKERS:
  - A. COMPENSATION: Seller or Buyer, or both, as applicable, agrees to pay companishen to Broker as specified in in Explosion written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Exprovition or if ascrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
  - B. BROKERAGE: Nother Buyer nor Seller has ultited the services of, or for any other reason owes concensation to, a consecutive reason over concensation to, a consecutive relating to the Property including, out not invited to, includes, norsecutions, consultations and negotiations leading to this Agreement. In connection with chy and relating to the Property, including, out not invited to, includes, norsecutions, consultations and negotiations leading to this Agreement. Euger and Seller each agree to indemnify, defend, and hold the other, the Brokers specified horizon and their agrees, namines from and against any costs, expenses or liabling for compensation claimed inconsistent with the warranty and representations in this paragraph.
  - C. SCOPE OF DUTY: Buyer and Sellar acknowledge and agree that Broker. (i) Does not decide what once Buyer should pay in Simer should accept: (ii) Does not guarantee the condition of the Property. (iii) Does not guarantee the performance, adequeuy or completeness of inspection of common areas or repairs provided or made by Solier or others. (iv) Does not have an obligated to conduct an inspection of common areas or areas off the site of the Property. (v) Shall not be responsible for identifying defects of the Property in common areas, or offsite unless such defects are visually observable by an inspection of reasonable accept defects are visually observable by an inspection of reasonable accept defects of the Property in common areas, or offsite unless such defects are visually observable by an inspection of reasonable accept defects of the Property or are known to Broker, (vi) Shall not be responsible for inspection of reasonable accept defects of the Property (vii) Shall not be responsible for identifying the location of occurrant international directing the (viii) Shall not be responsible for sentying square footage, representations of others or information contained in threating the (viii) Shall not be responsible for vertiging square footage, representations of others or information contained in threating the footage of the Property or any personal property included in the sale. (x) Shall not be responsible for graviting the footage of soler and (xi) Shall not be responsible for providing the footage of the responsible for providing the footage of soler and (xi) Shall not be responsible for providing the sole of the sale. (x) Shall not be responsible for providing the footage of the responsible
- 23. REPRESENTATIVE CAPACITY: If one or more Parties is signing the Agreement if a representative capacity and not for him/heiself as an individual then that Party shall so indicate in paragraph 40 or 41 and attach a Representative Dapacity Signature Disclosure (CA.R. Form RCSD). Wherever the signature or indials of the representative identified in the RCSD appear on the signature or indials of the representative identified in the RCSD appear on the signature capacity for the entity described and not an individual capacity unless otherwise indicates. The Party asting in a representative capacity for the entity described and not an individual capacity, unless otherwise indicates. The Party asting in a representative capacity for the entity described and not that the entity for which that party is acting already exists and (a) shall believe to the other Party and Escrew Holder, within 3 Days After Acceptance, enderse if authority to act in that capacity (such as but not amiled to explosible portion of the trust or Certification Of Trust (Primate Code 16100.5), letters testamentary, court order, power of attorney, corporate resolution or formation documents of the businest entity).
- 24. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:
  - A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any rebited counter offers and added a and any additional mutual instructions to clear the escrow paragraphs 1 3, 48, 54 6, 7, 10, 110, 17, 186, 21, 224, 23, 24, 30, 38, 39, 41, 42 and paragraph D of the section titled Real Estate Brokers on page 11. If a Count of the section uppendictor agreements) provided for in paragraph D of the section titled Real Estate Brokers on page 11. If a Count of the section agreements) provided for in paragraph D at the section titled Real Estate Brokers on page 11. If a Count of the section agreements) provided for in paragraph D at the section titled Real Estate Brokers on page 11. If a Count of the section agreements) provided for in paragraph 224, or paragraph D of the section titled Real Estate Brokers on page 11. If a Count of the section agreements) provided for in paragraph 224, or paragraph D of the section titled Real Estate Brokers on page 11. If a Count of the section agreements) provided for in paragraph 224, or paragraph D of the section titled Real Estate Brokers on page 11. If a Count of the section agreements) provided for in paragraph 224, or paragraph D of the section titled Real Estate Brokers on page 11. If a Count of the section agreements) provided for in paragraph 224, or paragraph D of the section titled Real Estate Brokers on page 11. If a Count of the section agreements) provided for in paragraph 224, or paragraph D of the section titled Real Estate Brokers on page 11. If a Count of the section agreements is provided for in paragraph 224, or paragraph 224, or paragraph 225, or paragraph 225, or paragraph 226, or paragraph 227, paragraph 227, paragraph 227, paragraph 228, paragra
- Hokter or HOA printCA management company or others any fee required by tanagraphic 7, 11 or resonance in the Agreement Super's Indiats (x Super

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE ADF 11)

1191

auffe finda ein

### Property Address: 6176 Federal Blvd, San Diego, CA 92114-1401

#### Date: March 21, 2017

Seller's India's

Stift's init ais9

arts to divisi

B. A Copy of this Agreement including any counter offer(s) and addence shall be delivered to Excitive Holder within 3 Days After Accuptance (or Buyer and Sever authorize Escrew

Hower to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open extrem if it for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Education Holder Signs this Agreement. Estrow Halper shall provide Seller's Statement of Information to Title company when research from Seller. If Seller delivers an affidavit to Excross Hnider to satisfy Seller's FIRPTA obligicion under paragraph tool. Excross Holder shall debvar to. Buyer a Quartied Substitute statement that complies with federal Law

- C. Brokers are a party to the escrew for the sole purpose of companisation pursuant to paragraph 22A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller merocably assign to Brokers compensation specified in paragraph 22A, and prevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Selfer shall release and held harmless Escrew Holder from any hability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement
- D. Upon receipt Escrow Holder shall provide Selfor and Selfer's Broker verification of Buyer's genesit at funds pursuant to paragraph 3A and 3B. Once Estrow Helder becomes aware of any of the following, Estrow holder shell immediately notify all Brokers: (I) if Buyer's Initial or any additional deposit is not made pursuant to this Agreement, on is not good at time of demosit with Eacrow Holder, or (ii) I Buyer and Seller instruct Escrew Holder to cancel escrew.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrew holder is responsible stratilities delivered to Escrew Holder within 3 Days after mutual association of the amondment

#### 25 REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit nonrefundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. LIQUIDATED DAMAGES. If Buyer fails to complete this purchase because of Buyer's default. Seller shall retain as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, Judicial decision or arbitration award AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C A R (EQRM RID) Buyer's Initials

#### 26. DISPUTE RESOLUTION:

- A. MEDIATION: The Parties agree to mediate any dispute or claim ansaig between them but of this Agreement, or Nery resulting transaction before resorting to arbitration or court action through the CAR. Consumer Mediation Center (www. consumermediation.org) or through any other mediation provider or service mitually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved, il, for any displite or claim to which this paragraph applies, any Party (i) commences an action (wholut first elemping to resolve the mutter through mediation, or (ii) before communications of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney less, even if mey would otherwise be available to that Party in any open action, THIS MEDIATION PROVISION APPLIES WHETHER OF NOT THE ARBITRATION PROVISION IS INITIALED Exclusions from this mediation agreement are specified in paragraph 260
- B ARBITRATION OF DISPUTES: The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION () NEUTRAL ARBITRATION."

Buyer's Indals CPA REVISED 1215 (PAGE 8 OF 11) Sebers to have s A ( COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE & OF 11) History and referred to open as 162". Here the start from Materia 41 "

### Property Address. 6176 Federal Blvd. San Diego, CA 92114-1401

Date March 21, 2017

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2935; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) PRESERVATION OF ACTIONS: The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) BROKERS: Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so m writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement
- 27. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer. Seller or other person. Bayer and Seller may select ANY Providers of their own choosing.
- 28 MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM: II Broker is a participant of a Multiple Listing Service ( MLB') or Property Tom System (PDS'). Broker is authorized to report to the MLS or PDS a pending sale and upon Oksiu Of Excercit, the terms of this therearter ho be published and deserminated to persons and entities authorized to use the information or terms approved by the MLS or PDS.
- 29. ATTORNEY FEES: In any octom proceeding, or arbitration between Buyer and Selker ansing out of this Agreement, the preveising Buyer or Selker shall be entitled to reasonable attorneys fees and costs from the non-preveising Buyer or Seller, excess to provided in pathoroph 26A.
- 30. ASSIGNMENT: Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the writer convert of Setur. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or cartial assignment what not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Setler (C.A.R. Form AOAA).
- 31 SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and more to the benefit of, Buyer and Scher and Bene respective successors and assigns, except as otherwise provided herein.
- 32 ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Selicit acknowledge (i) Federal, state, and total legislation incluse hability upon existing and former owners and users of real property in applicable situations for communicipativity, collined environmentally hazardous substances; (ii) Brokeris, has/have made no representation concerning the applicability of any such Law to this transaction of to Buyer of to Selicit, except as otherwise indicated in this Agreement (iii) Brokeris) has have made no representation concerning the existence, testing, discovery, location and evaluation of for and risks posed by environmentally hazardous substances, if any located on or potentially affecting the Property, and (iv) Buyer and Selicit and risks posed to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of for and risks posed to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of for and risks posed to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of for and risks posed to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of for and risks posed hy, environmentally hazardous substances, if any, located on or potentially affecting the Property.
- 33. AMERICANS WITH DISABILITIES ACT: The Americane Web Disabilities Ad trADAT prohibits discrimination agains individually with disabilities. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things that buildings be made readily accessible to the disabled. Different requirements apply to new construction, ulterations to existing buildings. Compliance with the ADA may require significant rants, Monetary and munchau remedies may be incurred if the Property is not in compliance. A real estate protein does not have the technical expension of before an advised to contact an attorney, contractor, architect, engineer or other gualities professional of Buyer's or Suffers own choosing to determine to what degree, if any, the ADA impacts that proceed or the transaction.
- 34. COPIES: Seler and Boyer each represent that Copies of all reports documents, pertificates, approvals and other documents for reheat
- to the other are true, correct and unaltered Corpes of the original documents, if the ong rules are in the possession of the lumismity purity
- 35. EQUAL HOUSING OPPORTUNITY: The Property is sold in compliance with Inderal, state and local appadementmination Laws
- 36. GOVERNING LAW: This Agreement shall be governed by the Laws of the state of Cautomia
- 37. TERMS AND CONDITIONS OF OFFER: This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement. Limitatice by all Hurtles of incorporated by mutual agreement in a counter offer or addendum. If at east one but not all Patter and at a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer all any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Cody of the offer and agreement to the offer is accepted and to accept and agreement to the offer is accepted and the user is accepted and the effect of a Cody of the offer and agreement to the offer is accepted and Euger subsequently defaults. Buyer may be reduced by payment of Brokers' compensation. This Agreement and any supplement, addendum or modification including any Clear, may be Signed in two or more counterparts all of which shall constitute one and the same writing.
- 38 TIME OF ESSENCE; ENTIRE CONTRACT: CHANGES: Time is of the essence. As understandings between the Parties incorporated in this Agreement, its terms are intended by the Parties as a final, complete and exclusive excression of the Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporate is oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions at invertie has be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and outputs shall be extended in accordance with the Laws of the State of California. Norther this Agreement nor any provision in it may be extended amended, modified, altered or changed, except in writing Signed by Buyer and Seller.
- 39. DEFINITIONS: As used in this Agreement
  - A. "Acceptance" means the time the offer or final counter offer is accepted in anting by a Party and oldelivered to and person the redered by the other Party or that Party is authorized signal in accordance with the forms of this offer or a final counter offer.
  - B. "Agreement" means this document and any counter offers and any incorporated addends (Collectively tomand the binding agreement between the Parties Addends are incorporated only when Signed av all Parties

Buyers Indiak (X CPA REVISED 1215 PAGE 9 OF 11) Se at 'n Intia : X

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 9 OF 11)

ALCOHOLD .

#### Property Address: 6175 Federal Blvd, San Dieno, CA 92114-1401

#### Date March 21, 2017

61"saviess!

- C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to u. the parties
- D. "Close Of Escrow" or "COE" means the date the grant deed, or other evidence of transfer of title, is recorded
- E. "Copy" means copy by any means including photocopy. NCR, factimile and electronic,
- F. "Days" means calendar days However, after Acceptance the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday. Sunday, or legal holiday and shall instead be the next Day
- G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting discalendar cale on which the specified event occurs, and ending at 11.59 Pt/ on the Frial day.
- H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified not counting the calendar date on which the specified event is scheduled to occur.
- I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be elleritive unon personal receipt by Buyer or Seller or the individual Real Estate Licenson for that principal as specified in the section (Jud Real Estate Brokers on page "1, regardless of the method used (i.e., messenger, mail, email, fax, other)
- J. "Electronic Copy" or "Electronic Signature" means, 35 populable, an electronic copy or signature completing with California Law, Buyer and Seller agree that electronic means will not be used by either Party to mobility or after the content or integrary effective the second s this Agreement without the knowledge and consent of the other Party.
- K. "Law" means any law code, statute, ordinance, regulation rule or order which is adopted by a controlling oily county, state or federal legislative, judicial or executive body or agency
- L. "Repairs" means any repairs (including past control), alterations implacements modifications or retrol they of the Property provided for under this Agreement. M. "Signed" means either a handwritten or electronic signature on an original document. Copy or any counterpart
- 40. AUTHORITY: Any person or persons scoring this Agreement represent(s) that such person has tot power and authority to tend that person's principal, and that the designated Buyer and Seller has full authority to enter into and perform this Agroenien't, Entering into that Agreement, and the completion of the obligations pursuant to this contract does not violate any Articles of Incorporate I. Arboies of Organization, By Laws, Operating Agreement, Partnership Agreement or other document governing the activity of either Billyer of Seller
- 41. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit. If any, shall be returned to Buyer unless the offer of Signed by Seller and a Copy of the Signed offer is personally roce and by Buyer or by \_\_\_\_ see Addendum 1 AN 7 211 00 who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer for by 1 (date)).

One of more Buyers is signing the Agreement in a representative capacity and not for timehensed as an individual. Boy alloched Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

| Dulu_324     | -17_ BUYER           | 1.17 | 2400 | ± | <br> |       |
|--------------|----------------------|------|------|---|------|-------|
|              | chard John Martin II |      |      |   | <br> | <br>- |
| Date         | BUYER                |      |      |   |      |       |
| (Print name) |                      |      |      |   | <br> |       |

Additional Signature Addendum attached (C.A.R. Form ASA)

42. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Hirspethy or has the authority to execute this Agreement Seller accepts the above offer and agrees to sell the Property on the above terms and concitions, and agrees a fee above contirmation of agency relationships. Softer has read and acknowledges recept of a Copy of this Agreement, and authorizer Broker to Deliver a Signed Copy to Buyer.

(If cherked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED

One or more Sellers is signing the Agragement in a representative capacity and not for himbatsed as an individual. See all ached Representative Capacity Signature Discissue/C.A.R. Form RGSD-5; for additional ternis.

21-1 SELLER Date (Print name) Darryl Cotton Date SELLER (Print name)

Additional Signature Addendum attached (C.A.R. Form ASA)

) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE. A Copy of signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) at(initials)

ALC PIA A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

CPA REVISED 12/15 (PAGE 10 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 10 OF 11)

Produced web spinorship y zoung + 16270 F from Wee Road Frader Michigan 45028, some prudy a new

Property Address: 6176 Federal Blvd, San Diego, CA 92114-1401

Clatu March 21, 2017

#### REAL ESTATE BROKERS:

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
- B. Agoncy relationships are confirmed as stated in paragraph 2.
- C. If specified in paragraph 3A(2), Agent who submitted the ofter for Buyer acknowledges receipt of deposit.

D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Conperating Broker is a Participant of the MLS in which the Preparty is offered for sale or a resproced MLS. It Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC), Declaration of License and Tax (C.A.R. Form DLT may be usen to document that tax reporting will be required or that an exemption exists

| Real Estate Broker (Selling From |     | The state of the s | CalBR1 Lis # |
|----------------------------------|-----|--|--------------|
| By                               |     | CalBRE F   | 2a'a         |
| By                               |     | CAIBRE LIC #   | Date         |
| Accress                          |     | City   | State Zo     |
| Felephone                        | Fax | E-man  |              |
| Real Estate Broker (Listing Firm | N/A |  | COBRELIC T   |
| Br                               |     | CalBRE LIF #   | Dinte        |
| By                               |     | CalBRE Los #   | Date         |
| Address                          |     | City   | State Zn     |
| Teleptione                       | Fax | Errai  |              |

#### ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Hader acknowledges receipt of a Copy of this Agreement, (ir checked \_\_\_\_\_ a deposit in the amount of 5 counter offer numbers Seler's Statement of Internation and -----

and agrees to act as Eachty the persubject to paragraph 24 of this agreement and supplemental escrew instructions and the terms of Escrew Holder's general provisions.

Estrow Rolder's advised that the date of Confirmation of Acceptance of the Agreement as Letween Boyar and Selen s

Escrow Holder

8, Address

Phones Fax'E mail

Escreta Holder has the following Reense number #

Department of Business Oversight, "Department of Insurance," Sulvau 21 Real Estate

PRESENTATION OF OFFER: ( ) Listing Broker presented this after to Seller on (date) Groker or Craughee Inclais

REJECTION OF OFFER: ( K ] No counter offer is being made. This offer was rejected by Seller on (5310)

Buyer's Indiais ( X/

Selec's maais : X

F WOTOW H

Date

02015 California Association of REALTORS %, the Landed States copyright law (The 17 u.C. Code Institutions unduring a subdice of the subdice

CODE Californa Association of REALTORSY, by Lower Soles copyright on Chief 17 U.S. Code (Mola) has unavoided a stable for any other or any other metric, including last main or campation of her use. In any portion thered, by the body matchine or any other metric, including last main or california. In the match the ECOM HAS BEEN APPROVED BY THE CLUPCHINA ASSOCIATION OF HEAL CONSE. CLARE NO HEPRESENTIATION IS MULE AS TO THE LEGAL VIELO AND CONTRACT, INCLUDING AND ASSOCIATION A REAL CONSE. THE PROVEMENT OF ANY PROVISION IN ANY SPECIFIC TRANSACTION A REAL TONSE TO ANY THE DECIDE AND HEPRESENTIATION IS MULE AS TO THE LEGAL VIELO AND ASSOCIATION A REAL TONSE. CLARE THE RECIDENCE CLAREFORD OF ANY PROVISION IN ANY SPECIFIC TRANSACTION A REAL TONSE TO ANY PROVISION CLAREFORD OF ANY PROVISION IN ANY SPECIFIC TRANSACTION A REAL TONSE TO THE RECIPERATE PROVIDE THE PROVIDE CLAREFORD OF ANY PROVISION IN ANY SPECIFIC TRANSACTION A REAL TONE FOR THE PROVIDE TO ANY PROVISION AND THE ASSOCIATION TO A REAL TO ANY ENDINE. THE PROVIDE THE ASSOCIATION A REAL TO ANY ENDINE TO A REAL TO ANY THE ASSOCIATION A REAL TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO A SPECIFIC TRANSACTION A REAL TO ANY ENDINE. THE ASSOCIATION A REAL TO ANY ENDINE TO ANY ADVICE TO A SPECIFIC TRANSACTION A REAL TO ANY ENDINE. A SALUDARI OF HEAL TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO A SPECIFIC TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE TO ANY ADVICE ASSOCIATION A REAL TO ANY ADVICE

whic subscribe to its Gode of Links.

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 11 OF 11) Pendacan with politismit by the tigs " Auto I meet that listed France " United at 21" antw.tt.bt.ttp"

Reviewed by

Broker or Designed

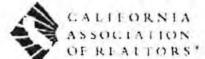


Published and Distrourse by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the CALIFORNIA ASSOCIATION OF REAL TOPOS

| 1211 | a seature is successive. |                |            |
|------|--------------------------|----------------|------------|
|      | 575 South Vant Avenue    | Los Ancoles Ca | forma work |

GPA REVISED 12/15 (PAGE 11 OF 11)

|  | 2 | ۰. | ۰. | 1 | - |
|--|---|----|----|---|---|



ADM REVISED 12/15 (PAGE 1 OF 1)

### ADDENDUM (C.A.R. Form ADM, Revised 12/15)

No. 1

1196

The following terms and conditions are hereby incorporated in and made a part of the Coloronaxe Agreement Residential Leave or Month-to-Month Rental Agreement. Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind). Other

| dated March 21, 2017 on pr  | operty show 1 as   | 6176 Federal Blvd  |
|---|--|--|
|   | San Diego, CA 92114-1401   |  |
| n which Ri  | chard John Martin II   | is referred to as "Buyar Tenar   |
| nd D  | Darryl Cotton  | is referred to as inSelectiLanctore  |
|   | Memorandum of Understanding  |  |
|   |  |  |
| his Memorandum of Understanding (*MO  | U") is fully incorporated into this pur  | rchase agreemont.  |
| eller shall roceive a 20% equity stake in t   | he business / MMCC upon approval :   | and completion.  |
| Seller shall receive on a monthly basis, 20   | % of the profits of the business / MM  | CC or \$10,000 whichever is greater  |
| The \$100,000 earnest money deposit is no   | n-refundable and shall be Seller's to  | keep even if the CUP application is denied   |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
| The foregoing terms and conditions are here   | by agreed to, and the undersigned ackn   | wiedge mount of a cony of this opcument  |
| Date March 21, 2017   | Date March   | 21, 2017   |
| Buyan Tonant x 200 John Martin II   | Sellertand   | kord x   |
|   |  | DarrywCatton   |
| Buyer/Tenant  | Seller/Land  | 616  |
|   | and Claims our in the case of the 171. S. Caste  | e mas ha waa wuxi dahalaan ki pisa a tiro adata  |
| THIS FORM HAS BEEN APPROVED BY THE CALIFOR<br>THIS FORM HAS BEEN APPROVED BY THE CALIFOR<br>OR ACCURACY OF ANY PROVISION IN ANY SPECI<br>TRANSACTIONS IF YOU DESDIFF LEGAL ON TAX ADV | A BRY GRAFT MAARK FROM BY SECURAR STREEMART<br>RNA ADDOLATION OF REALTOND IC A RUN<br>FICT TRANSACTION A REALTOND IC A RUN<br>VICE CONSULT AN APPROPRIATE PROFESSION<br>VICE CONSULT AN APPROPRIATE PROFESSION | rand franchs<br>NO REPRESENTATION IS MALE AS TO THE LEGAL MALE<br>LIS THE PERSON GUILTEET THE LEGAL OF REAL FOR<br>MALE<br>Easternal Antibulish of ROMETOPSE IF a net manake zilde |
| ntur subsultar to its Code of Flores  | and the mentionality mate which may be tread and   | , By MARILLARY OF THE DATIONAL ASSOCIATION OF MEALING  |
| <ul> <li>Publiched and Disbladed by<br/>REAL ESTATE BUSINESS SERVICES INC.</li> <li>a subsidiary of the California Association of REA</li> </ul>                                      | A: 70655   | (=   |
| <ul> <li>a subsidiary of the Castorna Association of Res</li> <li>total South Virgit Averue Las Angelins, Chillinnia</li> </ul>   | 10220 Researed by  | Date   |

ADDENDUM (ADM PAGE 1 OF 1)

|  | DENDUM<br>DN. Rovised 12/15) No.   |   |
|--|--|---|
| e following terms and conditions are hereby incorporated in<br>Month-to-Month Rental Agreement Transfer Disclosure t   | NO.  | 2   |
| Aonth-to-Month Rental Agreement. I ranafer Disclosure :  |  | State   |
| Service Servic | and made a part of the. X Purchase Agree<br>Statement (Note: An amendment to the TDS   | ment. C Residential Lease<br>may give the Buyer a right   |
| led March 21, 2017 on property known as  | 6176 Federal Blvg  | 1   |
| which Richard John Mart  |  | red to as "Buyur/Tenant"  |
| Darryl Cotton  |  | t lo las ("Secencianenero"  |
| Memorandum of Unde   | istanding and Agreement  |   |
| This Memorandum of Understanding and Agrooment ("M<br>rch 21, 2017.  | IOUA") amends the agreement reached by   | Buyer and Seller on   |
| Solier hereby transfers and solis to Buyer, with all the as<br>Solier hereby transfers and solis to Buyer, with all the as<br>the property and the associated CUP application pendin<br>Buyer shall immediately provide soliar with a \$50,000 no<br>The closing of this sale, including the payment of the ba<br>fall be completed upon the favorable resolution of the La<br>in addition, should a CUP application be approved at the<br>olier's previous agreement for an equity stake in the busi-<br>tup.<br>CONFIDENTIALITY CLAUSE: SELLER WILL NOT DISCLO<br>RECTLY OR INDIRECTLY, UNTIL HE HAS RESOLVED TH<br>OUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE (  | sociated rights and liabilities, his owners)<br>g before the City of San Diego for \$500,000<br>n-refundable deposit.<br>lance of the purchase price and all the req<br>rry Geraci lawsuit against Seller for the pri-<br>property, Buyer shall pay Seller a one-tim<br>ness is voided and Seller has no interest in<br>DSE BUYER'S IDENTITY OR THIS AGREEM<br>DE LEGAL ACTION WITH GERACI, FOR TH<br>DR MENTION BUYER IN ANY FORM TO AN   | D.<br>virements stated herein,<br>oporty<br>e payment of \$1,500,000.<br>I the property or the<br>NENT IN ANY FORM,<br>E AVOIDANCE OF |
| Y LITIGATION PROCEEDINGS OR IN ANY MATTERS RE<br>OULD SELLER BREACH THIS PROVISION, SELLER HEI   |  | R UNLAWFUL ACTIONS  |
| NY LITIGATION PROCEEDINGS OR IN ANY MATTERS RE<br>HOULD SELLER BREACH THIS PROVISION, SELLER HEI<br>REACH OF THIS PROVISION.   | REBY EXPRESSLY AGREES TO PAY TO B  | DR UNLAWFUL ACTIONS<br>UYER \$200,000 FOR   |
| NY LITIGATION PROCEEDINGS OR IN ANY MATTERS RE<br>HOULD SELLER BREACH THIS PROVISION, SELLER HEI<br>REACH OF THIS PROVISION.   | REBY EXPRESSLY AGREES TO PAY TO B  | DR UNLAWFUL ACTIONS<br>UYER \$200,000 FOR   |
| IY LITIGATION PROCEEDINGS OR IN ANY MATTERS RE<br>HOULD SELLER BREACH THIS PROVISION, SELLER HEI<br>REACH OF THIS PROVISION.   | The undersigned acknowledge receipt of a co<br>Date <u>April 15, 2017</u>  | DR UNLAWFUL ACTIONS<br>UYER \$200,000 FOR   |
| AVELITIGATION PROCEEDINGS OR IN ANY MATTERS RE<br>HOULD SELLER BREACH THIS PROVISION, SELLER HEI<br>REACH OF THIS PROVISION.<br>The loregoing terms and conditions are rereby agreed to, and<br>ata April 15, 2017<br>Dyor/Tonant X The formation  | The undersigned beknowledge receipt of a co<br>Date <u>April 15, 2017</u><br>Seller/Landbird X   | DR UNLAWFUL ACTIONS<br>UYER \$200,000 FOR   |
| AY LITIGATION PROCEEDINGS OR IN ANY MATTERS RE<br>HOULD SELLER BREACH THIS PROVISION, SELLER HEI<br>REACH OF THIS PROVISION.   | The undersigned acknowledge receipt of a co<br>Date <u>April 15, 2017</u>  | DR UNLAWFUL ACTIONS<br>UYER \$200,000 FOR   |
| he loregoing terms and conditions are hereby agreed to, and<br>ata <u>April 15, 2017</u><br>Richard John Martin II   | The undersigned beknowledge receipt of a co<br>Date <u>April 15, 2017</u><br>Seller/Landbird X   | DR UNLAWFUL ACTIONS<br>UYER \$200,000 FOR   |
| he loregoing terms and conditions are "ereby agreed to, and<br>tate April 15, 2017   | Pre undersigned adknowledge receipt of a co<br>Date <u>April 15, 2017</u><br>SellenLandlord X<br>Daty Totton<br>SellenLandlord X<br>Daty Totton<br>SellenLandlord<br>SellenLandlord<br>SellenLandlord<br>SellenLandlord<br>SellenLandlord<br>SellenLandlord  | DV DI INIS GOCUTIONS  |
| NY LITIGATION PROCEEDINGS OR IN ANY MATTERS REHOULD SELLER BREACH THIS PROVISION, SELLER HEIREACH OF THIS PROVISION,  TREACH OF THIS PROVISION,  The loregoing terms and conditions are thereby agreed to, and ata April 15, 2017  Uyor/TenantX  Richard Jahn Martin II  Uyer/Tenant  1365-2015, Codotto Association of REALTORS& the United Status copyr  1 form of any poden thereof, by pholocopy mathere of anyother means, the 1365-2015, Codotto Association of REALTORS& the United Status copyr  1 form of any poden thereof, by pholocopy mathere of anyother means, the 1365-2015, Codotto Association of REALTORS& the United Status copyr  1 form of any poden thereof, by pholocopy mathere of anyother means, the 1365-2015, Codotto Association of REALTORS& the United Status copyr  1 form of any poden thereof, by pholocopy mathere of anyother means, the 1365-2015, Codotto Association of REALTORS& the United Status copyr  1 form of any poden thereof, by pholocopy mathereof anyother means, the 1365-2015, Codotto Association of REALTORS& the United Status copyr  1 form of any poden thereof, by pholocopy mathereof anyothereof the anyothereof  1 form of any poden thereof, by pholocopy mathereof anyothereof  1 form of any poden thereof, by pholocopy mathereof anyothereof  1 form of any poden thereof, by pholocopy mathereof anyothereof  1 form of anyothereof as a security of a construction of the anyothereof  1 form of anyothereof as a security of a construction of the anyothereof  1 form of any of the California the associated collective and the thereof as a text of the anyothereof anyothereof  1 form of the anyothereof area to anyothereof anyothereof  1 formation of the additional text of the anyothereof area to anyothereof  1 formation of the additional text of the addition of the addition of  1 formation of the additional text of the additional text of the additional text of the additional text of the additional text of the additional text of the additional text of the additional text of the additional text of the additional text of  | The undersigned ocknowledge receipt of a co<br>Date <u>April 15, 2017</u><br>Seller/Landkord X<br>Datryl Cotton<br>Seller/Landkord X<br>Datryl Cotton<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landkord<br>Seller/Landk | DV DI INIS GOCUTIONS  |

#### ADDENDUM

#### C.A.R. Form ADM, Revised 12'15)

No. 3

The following terms and conditions are hereby incorporated in and made a part of the \_\_\_\_\_Purchase Agreement \_\_\_\_\_Residential Lease or Month-to-Month Rental Agreement, \_\_\_\_\_Transfer Disclosure Statement (Note, An amendment to the TDS may give the Buyer a nahr to rescind) \_\_\_\_\_Other

| datec    | March 21, 2017 , on propurty known as | 6176 Federal Blvd                |
|----------|---------------------------------------|----------------------------------|
|          | San Diego, CA 92114-140               | 01                               |
| in which | Richard John Martin II                | is reterred to as "Buyer Lenant" |
| and      | Darryl Cotton                         | is mored to as ("Selic: London!" |

This addendum is fully incorporated into this purchase agreement and amends the agreement reached between the parties on March 21, 2017, as amended by addendum 2 on April 15th, 2017.

Buyer hereby agrees to permit Seller to disclose this agreement in his response to Goraci's lawsuit

For the avoidance of doubt. Seller will not have to pay the \$200,000 fine for breach of the Confidentiality provision proviously agreed to.

The foregoing terms and conditions are hereby agreed to, and the unders area acknowledge receipt of a copy or this document

Date May 12, 2017 Buyer/Tenant X

Richard Joyn Martin II

20-

CALLFORNIA ASSOCIATION

OF REALIORS

Date May 12, 2017 Seller Landlord X Darry Cotton

Buyer Tenant

2 1846-2015, California Alsonaliza el REALTORSE, no Unite States esperije ina (1 de 17 u.s. C. de 1/ date taximatere in debitados vispita, e di estadarme i d

Init form, or any portion thereof, by photocoly mailtime or any photometers are mining tacking or or transmission of the formation of the second dependence of the second d

This form is made available to real estite professionals there plus an optimized and the putchase from the California Association of REALTORS. This can be all the to an the union and a REALTORS A EALTORS Is a registered on which early which may be used and by the memory of the REALTORS A BOAT STATISM OF WEALTORS who subscreet to its Code of Earlies

ADDENDUM (ADM PAGE 1 OF 1)

-.

Publishers and Chantadord By REAL ESTATE BUSINESS SERVICES, INC a suburbary of the California Associator of REALTORSS

ADM REVISED 12/15 (PAGE 1 OF 1)

| -  |             |      |
|----|-------------|------|
|    | Henerawd by | 2401 |
| ы. |             |      |

Seller Londlord



| 1        | FERRIS & BRITTON<br>A Professional Corporation  |                         |                               |
|----------|---|-------------------------|-------------------------------|
| 2        | Michael R. Weinstein (SBN 106464)<br>Scott H. Toothacre (SBN 146530)                  |                         |                               |
| 3        | 501 West Broadway, Suite 1450<br>San Diego, California 92101                          |                         |                               |
| 4<br>5   | Telephone: (619) 233-3131<br>Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com      |                         |                               |
| 6        | stoothacre@ferrisbritton.com  |                         |                               |
| 7        | Attorneys for Plaintiff/Cross-Defendant LARRY GE<br>and Cross-Defendant REBECCA BERRY | RACI                    |                               |
| 8        | SUPERIOR COURT  | OF CALIFORNIA           |                               |
| 9        | COUNTY OF SAN DIEGO   | ), CENTRAL DIVIS        | SION                          |
| 10       | LARRY GERACI, an individual,  | Case No. 37-2017-       | 00010073-CU-BC-CTL            |
| 11       | Plaintiff,  | Judge:<br>Dept.:        | Hon. Joel R. Wohlfeil<br>C-73 |
| 12       | V.  | PROOF OF SERV           | <b>/ICE</b>                   |
| 13       | DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,                       | [IMAGED FILE]           |                               |
| 14       | Defendants.   | Hearing Date:           | April 13, 2018<br>9:00 a.m.   |
| 15<br>16 | DARRYL COTTON, an individual,   | Hearing Time:<br>Filed: | March 21, 2017                |
| 17       | Cross-Complainant,  | Trial Date:             | May 11, 2018                  |
| 18       | V.  |                         |                               |
| 19       | LARRY GERACI, an individual, REBECCA  |                         |                               |
| 20       | BERRY, an individual, and DOES 1<br>THROUGH 10, INCLUSIVE,                            |                         |                               |
| 21       | Cross-Defendants.   |                         |                               |
| 22       |   |                         |                               |
| 23       |   |                         |                               |
| 24       |   |                         |                               |
| 25       |   |                         |                               |
| 26       |   |                         |                               |
| 27       |   |                         |                               |
| 28       |   |                         |                               |
|          | 1   |                         | 1199                          |
|          | PROOF OF  | SERVICE                 |                               |
|          |   |                         |                               |

| 1        | I, Ann  | a K. Lizano, declare that: I am over the age of 18 years and not a party to the case; I am  |  |  |  |
|----------|---|---|--|--|--|
| 2        | employed in, or am a resident of, the County of San Diego, California; and my business address is:  |   |  |  |  |
| 3        | 501 West Broadway, Suite 1450, San Diego, California 92101.   |   |  |  |  |
| 4        | On, April 10, 2018, I served the following documents:   |   |  |  |  |
| 5        | 1.  | PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES<br>IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE<br>LIS PENDENS; |  |  |  |
| 6        | 2   |   |  |  |  |
| 7        | 2.  | DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL<br>COTTON'S MOTION TO EXPUNGE LIS PENDENS;                                      |  |  |  |
| 8<br>9   | 3.  | DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO<br>DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS;                       |  |  |  |
| 10       | 4.  | MICHAEL R. WEINSTEIN SCHWEITZER IN SUPPORT OF OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS; and                      |  |  |  |
| 11       | 5.  | NOTICE OF LODGMENT IN SUPPORT OF PLAINTIFF LARRY GERACI'S   |  |  |  |
| 12<br>13 |   | <b>OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS.</b>   |  |  |  |
| 14       | [X] EMAIL.  | Based on an agreement of the parties to accept service by email, I caused the documents   |  |  |  |
| 15       | to be sent to the person at approximately 11:15 a.m. on the date above, to the following email      |   |  |  |  |
| 16       | addresses:  |   |  |  |  |
| 17       | Darryl Cotto<br>6176 Federa   | l Boulevard LAW OFFICE OF JACOB AUSTIN  |  |  |  |
| 18<br>19 | San Diego, C<br>Tel: (619) 95<br>Fax: (619) 2   | 54-4447San Diego, CA 92108 USA29-9387Tel: (619) 357-6850  |  |  |  |
| 20       |   | Fax: (888)357-8501<br>jpa@jacobaustinesq.com  |  |  |  |
| 21       | In Pro Per  | nd Cross-Complainant (Courtesv Copv onlv)   |  |  |  |
| 22       | I did not receive, within a reasonable time after the transmission, any electronic message or other |   |  |  |  |
| 23       | indication that the transmission was not successful.  |   |  |  |  |
| 24       | I declare under penalty of perjury under the laws of the State of California that the foregoing is  |   |  |  |  |
| 25       | true and corre  | ct.   |  |  |  |
| 26       | Dated: April  |   |  |  |  |
| 27       |   | Anna K. Lizano  |  |  |  |
| 28       |   |   |  |  |  |
|          |   |   |  |  |  |
|          |   | <sup>2</sup> 1200   |  |  |  |
|          |   | PROOF OF SERVICE  |  |  |  |

| FERRIS & BRITTON<br>A Professional Corporation<br>Michael R. Weinstein (SBN 106464)<br>Scott H. Toothacre (SBN 146530)<br>501 West Broadway, Suite 1450<br>San Diego, California 92101<br>Telephone: (619) 233-3131<br>Fax: (619) 232-9316<br>mweinstein@ferrisbritton.com<br>stoothacre@ferrisbritton.com |   |  |
|--|---|--|
| Attorneys for Plaintiff/Cross-Defendant LARRY G<br>Cross-Defendant REBECCA BERRY   | ERACI and   |  |
| SUPERIOR COUR  | T OF CALIFORNL  | A  |
| COUNTY OF SAN DIEC   | GO, CENTRAL DIV   | ISION  |
| LARRY GERACI, an individual,   | Case No. 37-201   | 7-00010073-CU-BC-CTL   |
| Plaintiff,   | Judge:<br>Dept.:  | Hon. Joel R. Wohlfeil<br>C-73  |
| v.<br>DARRYL COTTON, an individual; and<br>DOES 1 through 10, inclusive,<br>Defendants.  | OBJECTIONS<br>BY DEFENDAN   | ARRY GERACI'S<br>TO EVIDENCE LODGEI<br>NT DARRYL COTTON IN<br>HIS MOTION TO<br>PENDENS |
| DARRYL COTTON, an individual,<br>Cross-Complainant,<br>v.<br>LARRY GERACI, an individual, REBECCA<br>BERRY, an individual, and DOES 1<br>THROUGH 10, INCLUSIVE,<br>Cross-Defendants.   | [IMAGED FILH<br>Hearing Date:<br>Hearing Time:<br>Filed:<br>Trial Date: | April 13, 2018   |
| Plaintiff, LARRY GERACI, hereby obje<br>COTTON, in support of his Motion to Expunge No   |   |  |
| MATERIAL OBJECTED TO   | GROUNDS   | FOR OBJECTIONS   |
| Cotton Declaration, ¶ 3 in its entirety.   |   | otion to expunge <i>lis penden</i><br>admissible except relevan                        |
|  | 1   | 120  |

| MATERIAL OBJECTED TO  | GROUNDS FOR OBJECTIONS   |  |  |
|---|--|--|--|
|   | evidence. (Cal. Evid. Code, § 350.)  |  |  |
| Cotton Declaration, ¶ 4 in its entirety.  | Irrelevant to the motion to expunge <i>lis penden</i><br>No evidence is admissible except relevan<br>evidence. (Cal. Evid. Code, § 350.)   |  |  |
| Cotton Declaration, ¶ 6 to the extent it mischaracterizes the written agreement as a "receipt".   | Nowhere on the document does it reference the<br>it is a "receipt". To the extent this is Cotton<br>opinion, it is inadmissible lay opinion evidence<br>(Cal. Evid. Code, § 800.) To the extent Cotton<br>offering his lay opinion, the Declaration fails to<br>lay proper foundation for the opinion. (Ca<br>Evid. Code, § 702.)  |  |  |
| Cotton Declaration, ¶ 7 to the extent it mischaracterizes the written agreement as a "receipt".   | Nowhere on the document does it reference the<br>it is a "receipt". To the extent this is Cotton<br>opinion, it is inadmissible lay opinion evidence<br>(Cal. Evid. Code, § 800.) To the extent Cotton<br>offering his lay opinion, the Declaration fails to<br>lay proper foundation for the opinion. (Ca<br>Evid. Code, § 702.)  |  |  |
| Cotton Declaration, ¶ 8 to the extent it mischaracterizes the written agreement as a "receipt".   | Nowhere on the document does it reference that<br>it is a "receipt". To the extent this is Cotton<br>opinion, it is inadmissible lay opinion evidence<br>(Cal. Evid. Code, § 800.) To the extent Cotton<br>offering his lay opinion, the Declaration fails to<br>lay proper foundation for the opinion. (Ca<br>Evid. Code, § 702.) |  |  |
| Cotton Declaration, $\P$ 12 to the extent it references the "Text Communications".  | Lack of Foundation (Cal. Evid. Code, § 702<br>Hearsay (Cal. Evid. Code § 1200).  |  |  |
| Cotton Declaration, ¶ 15 to the extent it refers to the "Metadata Evidence."  | This is improper lay opinion in violation of<br>California Evidence Code, section 800. It als<br>lacks foundation in violation of Californi<br>Evidence Code, section 702. Additionally, the<br>evidence is irrelevant. (Cal. Evid. Code, § 350.)  |  |  |
| Cotton Declaration, ¶ 16 to the extent it refers to<br>the "Parcel Information Report" provided by the<br>City of San Diego, Development Services | Hearsay (Cal. Evid. Code, § 1200); Lack of Foundation (Cal. Evid. Code, § 702).  |  |  |
| <sup>2</sup> 120 <sup>2</sup><br>PLAINTIFF LARRY GERACI'S OBJECTIONS TO EVIDENCE LODGED BY DEFENDAN   |  |  |  |

| MATERIAL OBJECTED TO   | GROUNDS FOR OBJECTIONS  |
|--|---|
| Department.  |   |
| Cotton Declaration, $\P$ 20 to the extent it<br>references that Judge Wohlfeil told Cotton that<br>he knew Austin and Weinstein well and that he<br>did not believe the would engaged in unethical<br>actions. | Irrelevant (Cal. Evid. Code, § 350).  |
| Cotton Declaration, ¶ 21 in its entirety.  | Completely irrelevant to any issue in this case (Cal. Evid. Code, § 350).   |
| Cotton Declaration, ¶ 22 to the extent it<br>references an Independent Psychiatric<br>Assessment of Mr. Cotton.  | Irrelevant (Cal. Evid. Code, § 350).  |
| Exhibit 1 – Summary of Emails.   | Lacks foundation (Cal. Evid. Code, § 720)<br>Hearsay (Cal. Evid. Code, § 1200).   |
| Exhibit 3 – To the extent this has been identified as Metadata.  | Lacks foundation (Cal. Evid. Code § 720)<br>Hearsay (Cal. Evid. Code, § 1200); Irrelevar<br>(Cal. Evid. Code, § 350.)   |
| Exhibit 4.   | Irrelevant (Cal. Evid. Code, § 350); Improper<br>Expert Opinion as Cotton has failed to designat<br>an expert witness in this case; Hearsay (Ca<br>Evid. Code, § 1200). |
| 110  | RITTON<br>al Corporation<br>ibal R, Weinstein   |
| Scott H.<br>Attorneys for  | R. Weinstein<br>Toothacre<br>r Plaintiff and Cross-Defendant LARRY GERA<br>fendant REBECCA BERRY  |
|  |   |
|  |   |
|  | <sup>3</sup> 120  |

1 f

### **STATE OF CALIFORNIA** Court of Appeal, Fourth Appellate District Division 1



(Court of Appeal)

### Case Name: Cotton v. The Superior Court of San Diego County/Geraci et al. Court of Appeal Case Number: D073979

Superior Court Case Number: **37-2017-00010073-CU-BC-CTL** 

1. At the time of service I was at least 18 years of age and not a party to this legal action.

## 2. My email address used to e-serve: zoe.g.villaroman@gmail.com

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

| Ittle(s) of papers e-served: |   |                               |        |        |
|------------------------------|---|-------------------------------|--------|--------|
| Filing Type                  | Document Title                                |                               |        |        |
| EXHIBIT - EXHIBITS           | AMEND   | ED Vol IV of Exhibits ISO Pet | for WO | М      |
| EXHIBIT - EXHIBITS           | 2ND AMENDED Vol V of Exhibits ISO Pet for WOM |                               |        |        |
| PFRSON SERVED                |   | EMAIL ADDRESS                 | Type   | DATE / |

| PERSON SERVED               | EMAIL ADDRESS                | Туре    | DATE /<br>TIME |
|-----------------------------|------------------------------|---------|----------------|
| Darryl Cotton               | indagrodarryl@gmail.com      | e-      | 5/24/2018      |
| Darryl Cotton - Pro Se      |                              | Service | 12:10:33       |
| Pro Per                     |                              |         | PM             |
| Darryl Cotton               | indagrodarryl@gmail.com      | e-      | 5/24/2018      |
| Darryl Cotton - Pro Se      |                              | Service | 12:10:33       |
| Pro Per                     |                              |         | PM             |
| Jana Will                   | jwill@sandiego.gov           | e-      | 5/24/2018      |
| San Diego City Attorney     |                              | Service | 12:10:33       |
| 00211064                    |                              |         | PM             |
| Michael Weinstein           | mweinstein@ferrisbritton.com | e-      | 5/24/2018      |
| Ferris & Britton            |                              | Service | 12:10:33       |
| 00106464                    |                              |         | PM             |
| Michael Phelps              | mphelps@sandiego.gov         | e-      | 5/24/2018      |
| Office of the City Attorney |                              | Service | 12:10:33       |
| 00258246                    |                              |         | PM             |
| Scott Toothacre             | stoothacre@ferrisbritton.com | e-      | 5/24/2018      |
| Ferris & Britton            |                              | Service | 12:10:33       |
| 00146530                    |                              |         | PM             |

This proof of service was automatically created, submitted and signed on my behalf

through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

--Date

/s/Zoe Villaroman

Signature

Villaroman, Zoe (Pro Per)

Last Name, First Name (PNum)

Darryl Cotton - Pro Se

Law Firm