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(defendant Larry Geraci)

## **Exhibit A**

(11/02/16 Email from Geraci to Cotton)



Darryl Cotton &lt;indagrodarryl@gmail.com&gt;

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**Agreement**

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

Wed, Nov 2, 2016 at 3:11 PM

*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*

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**Cotton & Geraci Contract.pdf**

71K

## **Exhibit B**


(November 2<sup>nd</sup> Agreement)

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.

  
\_\_\_\_\_  
Larry Geraci  
\_\_\_\_\_  
Darryl Cotton

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2010 before me, Jessica Newell Notary Public  
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Gerasi,  
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.

WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)





My Comm. Expires Jan 27, 2013  
Notary Public - California  
Commission # 9003236  
JESSICA M. WHITE



## **Exhibit C**

(Email by Cotton to Geraci requesting Equity Position be included in Final Agreement; Reply in the affirmative by Geraci)



Darryl Cotton &lt;indagroddarryl@gmail.com&gt;

---

## Agreement

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

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 <darryl@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.

[Quoted text hidden]

## **Exhibit D**

(Phone records of calls to and from Cotton and Geraci)

**CALLS TO & FROM: 858.956.4040**

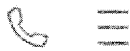
| STATEMENT<br>DATE     | LINE # | DATE     | TIME     | IN / OUT | CALL LENGTH | TOTAL TALK<br>TIME |
|-----------------------|--------|----------|----------|----------|-------------|--------------------|
| 08/26/16-<br>09/25/16 | 59     | 08/26/16 | 4:36 PM  | IN       | 9           | 60                 |
|                       | 329    | 09/02/16 | 11:22 AM | IN       | 12          |                    |
|                       | 338    | 09/02/16 | 11:47 AM | OUT      | 2           |                    |
|                       | 339    | 09/02/16 | 11:49 AM | OUT      | 3           |                    |
|                       | 558    | 09/08/16 | 2:45 PM  | OUT      | 1           |                    |
|                       | 780    | 09/13/16 | 10:48 AM | OUT      | 5           |                    |
|                       | 836    | 09/14/16 | 10:04 AM | IN       | 8           |                    |
|                       | 855    | 09/14/16 | 2:50 PM  | IN       | 5           |                    |
|                       | 860    | 09/14/16 | 3:51 PM  | OUT      | 2           |                    |
|                       | 934    | 09/15/16 | 3:52 PM  | OUT      | 2           |                    |
|                       | 1106   | 09/19/16 | 10:24 AM | OUT      | 5           |                    |
|                       | 1216   | 09/21/16 | 9:47 AM  | OUT      | 1           |                    |
|                       | 1255   | 09/21/16 | 3:56 PM  | OUT      | 1           |                    |
|                       | 1291   | 09/22/16 | 12:15 PM | IN       | 4           |                    |
| 09/26/16-<br>10/25/16 | 56     | 09/27/16 | 11:12 AM | OUT      | 1           | 60                 |
|                       | 63     | 09/27/16 | 12:30 PM | IN       | 5           |                    |
|                       | 145    | 09/28/16 | 4:08 PM  | IN       | 7           |                    |
|                       | 208    | 09/30/16 | 11:12 AM | OUT      | 2           |                    |
|                       | 214    | 09/30/16 | 11:35 AM | OUT      | 2           |                    |
|                       | 323    | 10/03/16 | 10:42 AM | OUT      | 1           |                    |
|                       | 324    | 10/03/16 | 10:44 AM | IN       | 5           |                    |
|                       | 381    | 10/04/16 | 9:02 AM  | OUT      | 1           |                    |
|                       | 385    | 10/04/16 | 9:10 AM  | IN       | 2           |                    |
|                       | 387    | 10/04/16 | 10:50 AM | OUT      | 1           |                    |
|                       | 445    | 10/05/16 | 11:22 AM | OUT      | 5           |                    |
|                       | 728    | 10/13/16 | 4:24 PM  | OUT      | 2           |                    |
|                       | 839    | 10/17/16 | 10:16 AM | IN       | 2           |                    |
|                       | 891    | 10/18/16 | 11:50 AM | IN       | 1           |                    |
|                       | 895    | 10/18/16 | 1:21 PM  | OUT      | 1           |                    |
|                       | 899    | 10/18/16 | 2:02 PM  | OUT      | 1           |                    |
|                       | 910    | 10/18/16 | 4:26 PM  | OUT      | 1           |                    |
|                       | 916    | 10/18/16 | 7:01 PM  | IN       | 7           |                    |
|                       | 978    | 10/20/16 | 10:27 AM | IN       | 7           |                    |
|                       | 1164   | 10/24/16 | 11:25 AM | OUT      | 1           |                    |
|                       | 1208   | 10/25/16 | 2:58 PM  | OUT      | 5           |                    |
|                       | 263    | 10/31/16 | 10:32 AM | IN       | 1           |                    |
|                       | 385    | 11/01/16 | 5:48 PM  | OUT      | 1           |                    |
|                       | 409    | 11/02/16 | 11:07 AM | OUT      | 1           |                    |
|                       | 416    | 11/02/16 | 12:54 PM | OUT      | 1           |                    |
|                       | 418    | 11/02/16 | 1:30 PM  | IN       | 1           |                    |

|                       |      |          |          |     |    |     |
|-----------------------|------|----------|----------|-----|----|-----|
| 10/26/16-<br>11/25/16 | 419  | 11/02/16 | 1:30 PM  | OUT | 11 | 41  |
|                       | 422  | 11/02/16 | 1:52 PM  | IN  | 2  |     |
|                       | 462  | 11/03/16 | 12:38 PM | OUT | 1  |     |
|                       | 464  | 11/03/16 | 12:40 PM | IN  | 3  |     |
|                       | 677  | 11/08/16 | 3:10 PM  | OUT | 1  |     |
|                       | 725  | 11/09/16 | 11:29 AM | OUT | 2  |     |
|                       | 1131 | 11/17/16 | 3:33 PM  | OUT | 1  |     |
|                       | 1132 | 11/17/16 | 3:35 PM  | IN  | 1  |     |
|                       | 1149 | 11/17/16 | 6:01 PM  | OUT | 13 |     |
|                       | 1173 | 11/18/16 | 11:51 AM | OUT | 1  |     |
| 11/26/16-<br>12/25/16 | 176  | 11/30/16 | 2:52 PM  | OUT | 1  | 17  |
|                       | 880  | 12/12/16 | 12:46 PM | OUT | 1  |     |
|                       | 892  | 12/12/16 | 5:47 PM  | IN  | 8  |     |
|                       | 982  | 12/14/16 | 10:14 AM | OUT | 1  |     |
|                       | 995  | 12/14/16 | 1:00 PM  | OUT | 1  |     |
|                       | 1017 | 12/14/16 | 3:44 PM  | OUT | 1  |     |
|                       | 1024 | 12/14/16 | 5:04 PM  | IN  | 4  |     |
| 12/26/16-<br>01/25/17 | 321  | 01/04/17 | 12:00 PM | OUT | 1  | 16  |
|                       | 322  | 01/04/17 | 12:11 PM | OUT | 4  |     |
|                       | 359  | 01/05/17 | 11:11 AM | OUT | 1  |     |
|                       | 383  | 01/05/17 | 8:16 PM  | OUT | 1  |     |
|                       | 390  | 01/06/17 | 8:07 AM  | OUT | 1  |     |
|                       | 494  | 01/09/17 | 11:56 AM | IN  | 2  |     |
|                       | 619  | 01/13/17 | 10:45 AM | OUT | 1  |     |
|                       | 624  | 01/13/17 | 11:32 AM | IN  | 4  |     |
|                       | 930  | 01/24/17 | 10:24 AM | OUT | 1  |     |
| 01/26/17-<br>02/25/17 | 193  | 01/30/17 | 3:49 PM  | OUT | 1  | 48  |
|                       | 254  | 01/31/17 | 5:25 PM  | OUT | 1  |     |
|                       | 268  | 01/31/17 | 6:57 PM  | IN  | 11 |     |
|                       | 434  | 02/06/17 | 8:49 AM  | OUT | 1  |     |
|                       | 450  | 02/06/17 | 12:14 PM | OUT | 1  |     |
|                       | 481  | 02/06/17 | 3:52 PM  | OUT | 1  |     |
|                       | 537  | 02/07/17 | 1:36 PM  | IN  | 5  |     |
|                       | 539  | 02/07/17 | 1:48 PM  | IN  | 2  |     |
|                       | 571  | 02/07/17 | 8:38 PM  | IN  | 12 |     |
|                       | 941  | 02/15/17 | 1:11 PM  | OUT | 1  |     |
|                       | 952  | 02/15/17 | 1:56 PM  | OUT | 1  |     |
|                       | 953  | 02/15/17 | 2:00 PM  | IN  | 9  |     |
|                       | 1303 | 02/23/17 | 2:57 PM  | OUT | 2  |     |
| 02/26/17-<br>03/25/17 | 178  | 03/01/17 | 6:10 PM  | OUT | 1  | 26  |
|                       | 225  | 03/02/17 | 9:49 AM  | OUT | 3  |     |
|                       | 352  | 03/04/17 | 2:04 PM  | OUT | 14 |     |
|                       | 443  | 03/06/17 | 3:36 PM  | OUT | 2  |     |
|                       | 445  | 03/06/17 | 3:53 PM  | OUT | 2  |     |
|                       | 562  | 03/09/17 | 9:12 AM  | OUT | 4  |     |
|                       |      |          |          |     |    | 268 |

## **Exhibit E**

(Text messages between Cotton and Geraci)

< **Larry Geraci**  
8589564040



SMS/MMS

Wednesday, January 4, 2017

L

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 better and ttyl

Thursday, January 5, 2017

8:52 AM

Any better?

Friday, January 6, 2017

8:40 AM

Can you call me. If for any reason you're not moving forward I need to know.

L

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

10:46 AM

Are you available for a call?

L

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

10:47 AM

10:47 AM

Thx



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 issue?

10:34 AM

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 confirmation today at about 4 o'clock

2:48 PM

Monday, February 6, 2017

12:15 PM

Whats new?

Tuesday, February 7, 2017

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.

8:19 AM

L

I'm just walking in with clients they resolved it it's fine we're just waiting for final paperwork

8:20 AM

10:15 AM

That sounds good. Can we speak later?

L

Not done intel 1030 tonight ...  
am tomorrow

11:27 AM

12:16 PM

K

Wednesday, February 15, 2017

L

Good morning Darrell... We  
are preparing the documents  
with the attor

ney and hopefully will have  
them by the end of this week

8:25 AM

1:00 PM Sounds good

Wednesday, February 22, 2017

L

Contract should be ready in a  
couple days

11:38 AM

Thursday, February 23, 2017

L

Can you call me when you get  
a chance thanks

2:38 PM

Monday, February 27, 2017

L

Good morning Darrell I  
emailed you the contract  
for the purchase of the  
property ...the relocation  
contract will come sometime  
today

8:50 AM

Hi Larry I'm traveling today  
I will have a chance to look  
at that tomorrow and I will  
forward it to my attorney  
thank you

10:04 AM

Friday, March 3, 2017

12:16 PM Did you get my email?

L 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

L 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

L Just sent the contract over

12:05 PM

12:10 PM Ill look it over tonight

Thursday, March 16, 2017

L How's it going with the  
contract?

4:47 PM

Friday, March 17, 2017

L Can we meet tomorrow

11:44 AM

 Enter message



## **Exhibit F**

(02/27/17 Email and attached draft Purchase Agreement )



Darryl Cotton <indagroddarryl@gmail.com>

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**Federal Blvd Property**

---

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

Mon, Feb 27, 2017 at 8:49 AM

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*

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**17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf**  
347K

## **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. **DEFINITIONS.** 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.       |

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,

Seller:

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

Escrow Agent: [NAME]  
[ADDRESS]

2. PURCHASE AND SALE. 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. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

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

b. Cash Balance. 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. ESCROW.

a. 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. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. 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. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. 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. Permitted Exceptions. 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. Title Policy. 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. Title and Survey Costs. 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. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. 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. DUE DILIGENCE. 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, 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. COVENANTS OF SELLER. 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. REPRESENTATIONS OF SELLER.

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.

(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 exist 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. 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. DAMAGE. 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. CONDEMNATION. 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 Seller's loss of income prior to closing.

14. CLOSING

a. Closing Date. 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. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. 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) Assignment of Intangible Property. 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) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

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

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

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

(1) Purchase Price. 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) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. 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) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. 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.



e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. 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. Transfer of Title. 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. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. 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. Buyer Will Pay. 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. Prorations.

(1) Taxes. 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

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) Utilities. 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. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

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

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. 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. Seller's Default. 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.

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. Escrow Cancellation Following a Termination Notice. 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. Other Expenses. 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. MISCELLANEOUS.

a. Entire Agreement. 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. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. 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. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. 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. 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.

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

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. 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. No Partnership. 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. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

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

m. Invalidity and Waiver. 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. Calculation of Time Periods. 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. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. 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. Further Assurances. 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. Execution in Counterparts. 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. Section 1031 Exchange. 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. Incorporation of Recitals/Exhibits. 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. Partial Invalidity. 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. 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 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. Legal Advice. 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. Memorandum of Agreement. 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

## **Exhibit G**

(03/02/17 Email from Geraci with attached draft Side Agreement)





Darryl Cotton &lt;indagrodarryl@gmail.com&gt;

---

**Statement**

---

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

Thu, Mar 2, 2017 at 8:51 AM

*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***

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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.



**17-0227 Side Agreement unsigned.docx**

35K

## **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.

## 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. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. 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. Attorneys' Fees. 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. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

3.6. Governing Law. 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, 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. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. 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).

3.11. No Partnership. 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. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. Invalidity and Waiver. 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. Notices. 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. Calculation of Time Periods. 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. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. 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. Execution in Counterparts. 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. Incorporation of Recitals/Exhibits. 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. 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:**

**6176 FEDERAL BLVD. TRUST**

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

Printed: \_\_\_\_\_

Its: Trustee

**SELLER:**

**DARRYL COTTON:**

\_\_\_\_\_



## **Exhibit H**

(03/03/17 Email from Cotton to Geraci that the draft Side Agreement is deficient;  
attached Service Contract Agreement)



Darryl Cotton <indagroddarryl@gmail.com>

---

Statement

---

Darryl Cotton <indagroddarryl@gmail.com> Fri, Mar 3, 2017 at 8:22 AM  
To: Larry Geraci <Larry@tfcSD.net>

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?

[Quoted text hidden]

---

 **IndaGro-GERL Service Contract.doc**  
691K



## 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

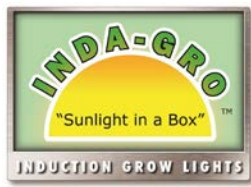
Mr. Geraci;

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.

- 1) 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: \_\_\_\_\_ Date: \_\_\_\_\_  
Larry Geraci

## **Exhibit I-1**

(03/07/17 Email from Geraci to Cotton requesting modification of the monthly equity amounts)



Darryl Cotton &lt;indagrodarryl@gmail.com&gt;

**Contract Review**

8 messages

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

Tue, Mar 7, 2017 at 12:05 PM

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***

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Circular 230 Disclaimer:

## **Exhibit I-2**

(Attachment of revised draft Side Agreement (03/07/17 email))

## **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.



## ARTICLE II GENERAL TERMS

2. Entire Agreement. 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. Termination. 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. Attorneys' Fees. 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. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

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

2.6. Confidentiality and Return of Documents. 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. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. No Partnership. 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.

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

2.11. Invalidity and Waiver. 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. Notices. 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. Calculation of Time Periods. 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,

## **Exhibit J**

(Website of <http://www.larrygeraci.com/home>)

## Tax & Financial Center, Inc.

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### Welcome!

Thank you for visiting our website.

Tax & Financial Center, Inc. is a full-service accounting firm serving clients throughout the San Diego area, dedicated to providing our clients with professional, personalized services and guidance in a wide range of financial and business needs.

On this website, you will find information about Tax & Financial Center, Inc., including our list of services. We have also provided you with online resources to assist in the tax process and financial decision-making. These tools include downloadable tax forms and publications, financial calculators, news and links to other useful sites. Whether you are an individual or business in or around San Diego, Tax & Financial Center, Inc. has years of valuable experience assisting professionals with their accounting needs.

We welcome any questions or comments you may have. Feel free to contact us at any time:

|                  |                 |  |             |
|------------------|-----------------|--|-------------|
| Larry Geraci     |                 | <a href="mailto:Larry@tfcscd.net">Larry@tfcscd.net</a>         | Extension 1 |
| Becky Berry      | Office Manager  | <a href="mailto:Becky@tfcscd.net">Becky@tfcscd.net</a>         | Extension 1 |
| Amanda Guinn     | Tax Preparation | <a href="mailto:Amanda@tfcscd.net">Amanda@tfcscd.net</a>       | Extension 1 |
| Jessica Newell   | Payroll         | <a href="mailto:Jessica@tfcscd.net">Jessica@tfcscd.net</a>     | Extension 2 |
| Stephanie Lagace | Bookkeeping     | <a href="mailto:Stephanie@tfcscd.net">Stephanie@tfcscd.net</a> | Extension 3 |
| Yhenia Barreras  | Bookkeeping     | <a href="mailto:Yhenia@tfcscd.net">Yhenia@tfcscd.net</a>       | Extension 4 |

Telephone...  
(858) 578-1040

Fax...  
(858) 630-3900

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

You can also send us a message directly through the contact page of this website.

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Darryl Cotton <indagroddarryl@gmail.com>

---

## PTS 520606 - Federal Blvd MMCC

3 messages

---

**Tirandazi, Firouzeh** <FTirandazi@sandiego.gov>

Thu, Mar 16, 2017 at 4:55 PM

To: "dcotton@fleetsystems.net" <dcotton@fleetsystems.net>

Cc: "becky@tfcSD.net" <becky@tfcSD.net>, "brianna@bhpsonline.com" <brianna@bhpsonline.com>

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

[\(619\)446-5325](tel:6194465325)

[sandiego.gov](http://sandiego.gov)



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### CONFIDENTIAL COMMUNICATION

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**sharpcooper@sandiego.gov\_20170316\_171949.pdf**

580K

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

Thu, Mar 16, 2017 at 5:36 PM

To: "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>

Hello Firouzeh,

Thank you for speaking with me today. This is in fact my signature and I think that the applicant is related to a party that I have a preliminary understanding with. I will handle matters on my end.

Thank you again.

Best,

Darryl Cotton

[Quoted text hidden]

---

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

Tue, Mar 21, 2017 at 3:25 PM

To: "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>

Cc: "becky@tfcscd.net" <becky@tfcscd.net>, "brianna@bhpsonline.com" <brianna@bhpsonline.com>, Larry Geraci <Larry@tfcscd.net>

Hello Firouzeh,

As a follow-up to our recent conversations, the potential buyer, Larry Geraci (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 <FTirandazi@sandiego.gov> wrote:

[Quoted text hidden]



Darryl Cotton &lt;indagrodarryl@gmail.com&gt;

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**Contract Review**

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**Darryl Cotton** <indagrodarryl@gmail.com>  
To: Larry Geraci <Larry@tfcSD.net>

Thu, Mar 16, 2017 at 8:23 PM

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

[Quoted text hidden]



## **Exhibit L**

(03/16/17 Email from Cotton to Geraci detailing events of their negotiations)



Darryl Cotton &lt;indagrodarryl@gmail.com&gt;

---

**Contract Review**

---

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

Fri, Mar 17, 2017 at 2:15 PM

To: Larry Geraci &lt;Larry@tfcSD.net&gt;

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

[Quoted text hidden]

## **Exhibit M**

(03/21/17 Email from Cotton to Geraci advising that there is no further agreement)



Darryl Cotton <indagrodarryl@gmail.com>

---

## Contract Review

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

Tue, Mar 21, 2017 at 3:18 PM

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]

N - Stipulation for Entry of Judgment and Permanent Injunction;  
Judgment Thereon in *City of San Diego v. CCSquared* (defendant  
Larry Geraci); Stipulation for Entry of Judgment and Permanent  
Injunction; Judgment Thereon in *City of San Diego v. The Tree Club*  
(defendant Larry Geraci)

Stipulation

No Fee GC §6103

FILED  
Clerk of the Superior Court

JUN 17 2015

FILED  
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy  
15 JUN 11 PM 107

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal  
corporation,

Plaintiff,

v.

CCSQUARED WELLNESS COOPERATIVE,  
a California corporation;  
BRENT MESNICK, an individual;  
JL INDIA STREET, LP, formerly known as JL  
INDIA STREET, LLC;  
JEFFREY KACHA, an individual; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2015-00004430-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL  
JUDGMENT AND PERMANENT  
INJUNCTION; JUDGMENT THEREON  
[CCP § 664.6]

IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered.

///

1           2. The parties to this Stipulation are parties in two civil actions pending in the Superior  
2 Court of the State of California for the County of San Diego. It is the intention of the parties that  
3 the terms of this Stipulation constitute a global settlement of the following cases:

4           a. *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-  
5 00004430-CU-MC-CTL.

6           b. *City of San Diego v. LMJ 35<sup>th</sup> Street Property LP, et al.*, Case No. 37-2015-  
7 000000972.

8           3. The parties wish to avoid the burden and expense of further litigation and accordingly  
9 have determined to compromise and settle their differences in accordance with the provisions of  
10 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein  
11 shall be deemed to constitute an admission or an adjudication of any of the allegations of the  
12 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and  
13 only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent  
14 Injunction by the Superior Court.

15           4. The address where the Defendants were maintaining a marijuana dispensary business  
16 at all times relevant to this action is 3505 Fifth Avenue, San Diego, also identified as Assessor's  
17 Parcel Number 452-407-17-00 (PROPERTY). The PROPERTY is currently owned by JL INDIA  
18 STREET, LP, formerly known as JL INDIA STREET, LLC.

19           5. The legal description of the PROPERTY is:

20           Lot 3 in block 45 of loma grande, in the city of San Diego, County of San  
21           Diego, State of California, according to Map thereof No. 692, filed in the  
22           Office of the County Recorder of San Diego County, November 23, 1891.

23           6. This action is brought under California law and this Court has jurisdiction over the  
24 subject matter, the PROPERTY, and each of the parties to this Stipulation.

#### 24           INJUNCTION

25           7. The provisions of this Stipulation are applicable to Defendants, their successors and  
26 assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or  
27 other entities acting by, through, under or on behalf of Defendants, and all persons acting in  
28 concert with or participating with Defendants with actual or constructive knowledge of this

1 Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,**  
2 Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San  
3 Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil  
4 Procedure section 526, and under the Court's inherent equity powers, from engaging in or  
5 performing, directly or indirectly, any of the following acts:

6 Keeping, maintaining, operating or allowing any commercial, retail, collective,  
7 cooperative or group establishment for the growth, storage, sale or distribution of marijuana,  
8 including, but not limited to, any marijuana dispensary, collective or cooperative organized  
9 anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to  
10 the San Diego Municipal Code.

#### 11 COMPLIANCE MEASURES

12 **DEFENDANTS agree to do the following at the PROPERTY:**

13 8. **Immediately** cease maintaining, operating, or allowing any commercial, retail,  
14 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of  
15 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative  
16 organized pursuant to the California Health and Safety Code.

17 9. The Parties acknowledge that where local zoning ordinances allow the operation of a  
18 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then  
19 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or  
20 cooperative in the City of San Diego as authorized under the law after Defendants provide the  
21 following to Plaintiff in writing:

- 22 a. Proof that the business location is in compliance with the ordinance; and  
23 b. Proof that any required permits or licenses to operate a marijuana dispensary,  
24 collective or cooperative have been obtained from the City of San Diego as  
25 required by the SDMC.

26 10. **Within 24 hours from the date of signing this Stipulation,** remove all signage from  
27 the exterior of the premises advertising a marijuana dispensary, including but not limited to,  
28 signage advertising CCSquared Wellness Cooperative or CCSquared Storefront.



1 11. No later than 48 hours from signing this Stipulation cease advertising on the  
2 internet, magazines or through any other medium the existence of CCSquared Wellness  
3 Cooperative or CCSquared Storefront at the PROPERTY.

4 12. No later than 48 hours from signing this Stipulation remove all fixtures, items and  
5 property associated with a marijuana dispensary business from the PROPERTY.

6 13. Within one week of signing this Stipulation, Defendant will contact City zoning  
7 investigator Leslie Sennett at 619-236-6880 to schedule an inspection of the PROPERTY.

8 **MONETARY RELIEF**

9 14. Defendants, jointly and severally, shall pay Plaintiff City of San Diego, for  
10 Development Services Department, Code Enforcement Section's investigative costs, the amount  
11 of \$2,438.03. All other attorney fees and costs expended by the parties in the above-captioned  
12 case are waived by the parties. The parties agree that payment in full of the monetary amount  
13 referenced as investigative costs is applicable to and satisfies payment of investigative costs for  
14 both cases referenced in paragraph 2 above.

15 15. Defendants shall jointly and severally pay to Plaintiff City of San Diego civil penalties  
16 in the amount of \$75,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims  
17 against Defendants arising from any of the past violations alleged by Plaintiff in this action.  
18 **\$37,500 of these penalties is immediately suspended.** Payment in the amount of \$37,500 in  
19 civil penalties plus \$2438.03 in investigative costs referenced in paragraph 14, totaling  
20 \$39,938.03, shall be made in 24 monthly installments of \$1,664.09 each beginning on or before  
21 June 5, 2015, and continuing on the fifth of each successive month until paid in full. Receipt of  
22 Defendants' initial monthly payment of \$1,664.09 on June 4, 2015 is acknowledged. The parties  
23 agree that payment in full of the monetary amounts referenced as civil penalties is applicable to  
24 and satisfies payment of civil penalties for both of the cases referenced in paragraph 2 above. All  
25 payments shall be made in the form of a certified check payable to the "City of San Diego," and  
26 shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue,  
27 Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

28 ///

1 16. The suspended penalties shall only be imposed if Defendants fail to comply with the  
2 terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if  
3 imposition of the penalties will be sought by Plaintiff and on what basis.

#### 4 **ENFORCEMENT OF JUDGMENT**

5 17. In the event of default by Defendants as to any amount due under this Stipulation, the  
6 entire amount due shall be deemed immediately due and payable as penalties to the City of San  
7 Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the  
8 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing  
9 legal rate from the date of default until paid in full. Service by mail shall constitute sufficient  
10 notice for all purposes.

11 18. Nothing in this Stipulation shall prevent any party from pursuing any remedies as  
12 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,  
13 including criminal prosecution and civil penalties that may be authorized by the court according  
14 to the SDMC at a cumulative rate of up to \$2,500 per day per violation occurring after the  
15 execution of this Stipulation.

16 19. Defendants agree that any act, intentional act, omission or failure by their contractors,  
17 successors, assigns, partners, members, agents, employees or representatives on behalf of  
18 Defendants to comply with the requirements set forth in Paragraphs 7-15 above will be deemed to  
19 be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to  
20 comply with any part of this Stipulation. Further, should any dispute arise between any  
21 contractor, successor, assign, partner, member, agent, employee or representative of Defendants  
22 for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to  
23 comply with any part of this Stipulation, nor justify a delay in executing its requirements.

#### 24 **RETENTION OF JURISDICTION**

25 20. The Court will retain jurisdiction for the purpose of enabling any of the parties to  
26 this Stipulation to apply to this Court at any time for such order or directions that may be  
27 necessary or appropriate for the construction, operation or modification of the Stipulation, or for  
28 the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

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RECORDATION OF JUDGMENT

21. This Stipulation shall not be recorded unless there is an uncured breach of the terms herein, in which instance a certified copy of this Stipulation and Judgment may be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

22. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by regular mail shall constitute sufficient notice for all purposes.

23. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

By

Marsha B. Kerr

Marsha B. Kerr  
Deputy City Attorney  
Attorneys for Plaintiff

Dated: 6-10, 2015

JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC

By

Jeffrey Kacha General Partner

Dated: 6-10, 2015

Jeffrey Kacha, an individual

Dated: 6-8, 2015

Lawrence E. Geraci, aka Larry Geraci, an individual

1 Dated: 6/11/15, 2015

2 By 

3 Joseph S. Carmellino  
4 Attorney for Defendants Jeffrey Kacha and  
5 JL India Street LP, formerly known as JL  
6 India Street, LLC

7 **JUDGMENT**

8 Upon the stipulation of the parties hereto and upon their agreement to entry of this  
9 Stipulation without trial or adjudication of any issue of fact or law herein, and good cause  
10 appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

11 Dated: 6-17-16

 JOHN S. MEYER

12 JUDGE OF THE SUPERIOR COURT  
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Stipulation

FILED  
Clerk of the Superior Court  
No Fee GC \$6103  
OCT 27 2014  
By: D. JELLISON, Deputy

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,  
  
Plaintiff,  
  
v.  
  
THE TREE CLUB COOPERATIVE, INC., a California corporation;  
JONAH McCLANAHAN, an individual;  
JOHN C. RAMISTELLA, an individual;  
JL 6th AVENUE PROPERTY, LLC, a California limited liability company;  
LAWRENCE E. GERACI, also known as LARRY GERACI, an individual;  
JEFFREY KACHA, an individual; and  
DOES 1 through 50, inclusive,  
  
Defendants.

Case No. 37-2014-00020897-CU-MC-CTL  
  
JUDGE: RONALD S. PRAGER  
  
STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6]

IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and by Marsha B. Kerr, Deputy City Attorney, and Defendants JL 6th AVENUE PROPERTY, LLC, a California limited liability company; LAWRENCE E. GERACI, aka LARRY GERACI, an individual; and JEFFREY KACHA, an individual, appearing by and through their attorney, Joseph S. Carmellino, enter into the following Stipulation for Entry of Final Judgment in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered:

1           1. This Stipulation for Entry of Final Judgment (Stipulation) is executed between and  
2 among Plaintiff City of San Diego, a municipal corporation, and Defendants JL 6th AVENUE  
3 PROPERTY, LLC; LAWRENCE E. GERACI, aka LARRY GERACI; and JEFFREY KACHA  
4 only, who are named parties in the above-entitled action (collectively, "Defendants").

5           2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court  
6 of the State of California for the County of San Diego, entitled *City of San Diego, a municipal*  
7 *corporation v., The Tree Club Cooperative, Inc., a California corporation; Jonah McClanahan,*  
8 *an individual; John C. Ramistella, an individual; JL 6th Avenue Property, LLC, a California*  
9 *limited liability company; Lawrence E. Geraci, also known as Larry Geraci, an individual;*  
10 *Jeffrey Kacha, an individual; and DOES 1 through 50, inclusive,* Case No. 37-2014-00020897-  
11 CU-MC-CTL. This Stipulation does not affect *City of San Diego v. Tycel Cooperative, Inc., et al.,*  
12 San Diego Superior Court case No. 37-2014-00025378-CU-MC-CTL, which is a separate case to  
13 be considered separately.

14           3. The parties wish to avoid the burden and expense of further litigation and accordingly  
15 have determined to compromise and settle their differences in accordance with the provisions of  
16 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein  
17 shall be deemed to constitute an admission or an adjudication of any of the allegations of the  
18 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and  
19 only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent  
20 Injunction by the Superior Court.

21           4. The address where the tenant Defendants were maintaining a marijuana dispensary  
22 business is 1033 Sixth Avenue, San Diego, California, 92101, also identified as Assessor's Parcel  
23 Number 534-186-04-00 (PROPERTY).

24           5. The PROPERTY is owned by JL 6th AVENUE PROPERTY, LLC (JL), according to  
25 San Diego County Recorder's Grant Deed, Document No. 2012-0184893, recorded March 29,  
26 2012. Defendants GERACI and KACHA are members of JL and hereby certify they have  
27 authority to sign for and bind JL herein.

28       ///

6. The legal description of the PROPERTY is:

THE NORTH HALF OF LOT D IN BLOCK 34 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 522 OF DEEDS, IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY.

7. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

## INJUNCTION

8. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

a. Keeping, maintaining, operating, or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.

b. Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.

## COMPLIANCE MEASURES

**DEFENDANTS** agree to do the following at the **PROPERTY**:

9. Within 24 hours from the date of signing this Stipulation, cease maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

1           10. The Parties acknowledge that where local zoning ordinances allow the operation of a  
2 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then  
3 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or  
4 cooperative in the City of San Diego as authorized under the law after Defendants provide the  
5 following to Plaintiff in writing:

- 6           a. Proof that the business location is in compliance with the ordinance; and  
7           b. Proof that any required permits or licenses to operate a marijuana dispensary,  
8 collective or cooperative have been obtained from the City of San Diego as required by the  
9 SDMC.

10           11. If the marijuana dispensary that is operating at the **PROPERTY**, including but  
11 not limited to, **The Tree Club Cooperative, Inc., Jonah McClanahan and John C.**  
12 **Ramistella**, does not agree to immediately voluntarily vacate the premises, then within **24**  
13 **hours from the date of signing this Stipulation**, DEFENDANTS shall in good faith use all legal  
14 remedies available to evict the marijuana dispensary business known as **The Tree Club**  
15 **Cooperative, Inc., Jonah McClanahan and John C. Ramistella** or the appropriate party responsible  
16 for the leasehold and operation of the marijuana dispensary, including but not limited to,  
17 prosecuting an unlawful detainer action.

18           12. **Within 24 hours from the date of signing this Stipulation**, remove all signage from  
19 the exterior of the premises advertising a marijuana dispensary, including but not limited to,  
20 signage advertising **The Tree Club Cooperative**.

21           13. **Within 24 hours from the date of signing this Stipulation**, post a sign for a  
22 minimum of 60 calendar days, conspicuously visible from the exterior of the **PROPERTY** stating  
23 in large bold font and capital letters that can be seen from the public right way, that "**The Tree**  
24 **Club Cooperative**" is permanently closed and that there is no dispensary operating at this address.

25           14. Allow personnel from the City of San Diego access to the **PROPERTY** to inspect for  
26 compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of  
27 8:00 a.m. and 5:00 p.m.



15. When this Stipulation has been filed with the Court, Jeffrey Kacha will personally pick up a conformed copy of the Stipulation and Order from the Office of the City Attorney. He or his attorney will contact the City's investigator, Connie Johnson, at 619-533-5699 within 15 days of the filing of this Stipulation to set a time for Mr. Kacha to pick up the conformed copy.

## MONETARY RELIEF

16. Within 15 calendar days from the date of signing this Stipulation, Defendants shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of \$281.93. Payment shall be in the form of a certified check, payable to the "City of San Diego," and shall be in full satisfaction of all costs associated with the City's investigation of this action to date. The check shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

17. Commencing within 30 days of signing this Stipulation, Defendants shall pay to Plaintiff City of San Diego civil penalties in the amount of \$25,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **\$19,000 of these penalties is immediately suspended.** These suspended penalties shall only be imposed if Defendants fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties in the amount of \$6,000 shall be paid in 15 monthly installments of \$400.00 each, at 30-day intervals following the date of the first payment as specified above, in the form of a certified check, payable to the "City of San Diego," and delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: Marsha B. Kerr.

## ENFORCEMENT OF JUDGMENT

18. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the

1 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing  
2 legal rate from the date of default until paid in full.

3 19. Nothing in this Stipulation shall prevent any party from pursuing any remedies as  
4 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,  
5 including criminal prosecution and civil penalties that may be authorized by the court according  
6 to the SDMC at a cumulative rate of up to \$2,500 per day per violation.

7 20. Defendants agree that any act, intentional or negligent, or any omission or failure by  
8 their contractors, successors, assigns, partners, members, agents, employees or representatives to  
9 comply with the requirements set forth in Paragraphs 8-17 above will be deemed to be the act,  
10 omission, or failure of Defendants and shall not constitute a defense to a failure to comply with  
11 any part of this Stipulation. Further, should any dispute arise between any contractor, successor,  
12 assign, partner, member, agent, employee or representative of Defendants for any reason,  
13 Defendants agree that such dispute shall not constitute a defense to any failure to comply with  
14 any part of this Stipulation, nor justify a delay in executing its requirements.

#### 15 RETENTION OF JURISDICTION

16 21. The Court will retain jurisdiction for the purpose of enabling any of the parties to this  
17 Stipulation to apply to this Court at any time for such order or directions that may be necessary or  
18 appropriate for the construction, operation or modification of the Stipulation, or for the  
19 enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

#### 20 RECORDATION OF JUDGMENT

21 22. A certified copy of this Judgment shall be recorded in the Office of the San Diego  
22 County Recorder pursuant to the legal description of the PROPERTY.

#### 23 KNOWLEDGE AND ENTRY OF JUDGMENT

24 23. By signing this Stipulation, Defendants admit personal knowledge of the terms set  
25 forth herein. Service by mail shall constitute sufficient notice for all purposes.

26 ///

24. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: OCT. 21, 2014

JAN I. GOLDSMITH, City Attorney

By

Marsha B. Kerr  
Marsha B. Kerr  
Deputy City Attorney  
Attorneys for Plaintiff

Dated: 7/26 2014

JL 6<sup>TH</sup> AVENUE PROPERTY, LLC

By

[Signature]  
Member

Dated: 10-21-14 2014

[Signature]  
Lawrence E. Geraci aka Larry Geraci, an  
individual

Dated: 9/26 2014

[Signature]  
Jeffrey Kacha

Dated: 9/26 2014

[Signature]  
Joseph S. Carmellino, Attorney for  
Defendants JL 6<sup>th</sup> Avenue Property, LLC,  
Lawrence E. Geraci aka Larry Geraci and  
Jeffrey Kacha

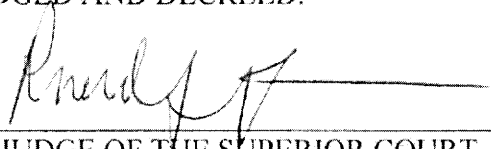
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*[Handwritten initials]*

**ORDER**

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 10/27/14

  
JUDGE OF THE SUPERIOR COURT

**RONALD S. PRAGER**

37-2014-00020897-CU-MC-CTL

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Geraci.docx