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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

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4 PRO PER

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6 SUPERIOR COURT OF CALIFORNIA  
7  
8 COUNTY OF SAN DIEGO – CENTRAL DIVISION

9 LARRY GERACI, an individual,  
10  
Plaintiff,

11 v.

12 DARRYL COTTON, an individual, and  
DOES 1-10, inclusive,

13 Defendants.

14 -----  
AND RELATED CROSS-ACTION  
15 -----

16 DARRYL COTTON, an individual,  
17  
Petitioner/Plaintiff,

18 v.

19 CITY OF SAN DIEGO, a public entity;  
and DOES 1 through 25,

20 Respondents/Defendants.  
21 -----

22 REBECCA BERRY, and individual;  
LARRY GERACI, an individual, and  
23 ROES 1 through 25,

24 Real Parties In Interest.  
25 -----

26 I. LEGAL INTRODUCTION

27 I, Darryl Cotton (Cotton or Petitioner), Defendant and Cross-Complainant in the matter  
28 against Larry Geraci (Geraci or Respondent) and Rebecca Berry (Berry) and Petitioner/Plaintiff

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

8  
9 Consequently, pursuant to CCP §§ 904.1(a)(6), 923 and the *Emeryville* line of cases, a  
10 Writ of Supersedeas and Writ of Mandate is warranted and the Motions to Compel should be  
11 denied while my appeals are reviewed by the Court of Appeals (COA).<sup>1</sup> I respectfully submit  
12 that the only issue that this Court needs to fully understand to decide these Motions to Compel is  
13 whether this Court would have made a different factual finding regarding my likelihood of  
14 success on the merits of my cause of action for breach of contract had my then-counsel not been  
15 negligent at the oral hearing and raised with this Court a single 1-page email.

## 16 II. PLAIN LANGUAGE INTRODUCTION AND RESPECTFUL REQUEST

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

24  
25  
26 <sup>1</sup> See E. Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E ("Stay" to preserve status quo  
27 following denial of TRO or injunction: Where a temporary restraining order or injunction has been denied and the  
28 defendant threatens to perform the act in question, a stay of the trial court order obviously will not "preserve the  
status quo." Here, the appellate court has authority to issue a "stay" (as distinguished from supersedeas) enjoining  
defendant from doing the action in question pending the appeal. [CCP § 923—court of appeal may "make any order  
appropriate to preserve the status quo" during pendency of an appeal; *People ex rel. San Francisco Bay  
Conservation & Develop. Comm'n v. Town of Emeryville*, supra, 69 C2d at 536-539, 72 CR at 792-794].).



1 Nature of the Judicial Process 51 (1925)).]"<sup>2</sup>

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

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

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

26  
27 <sup>2</sup> Governmental Conspiracies to Violate Civil Rights: A Theory Reconsidered. Michael Finch. Montana Law  
Review Volume 57. Issue 1 Winter 1996. Page 1.

28 <sup>3</sup> See Handling Cases Involving Self-Represented Litigants. Administrative Office of the Courts. January 2007.  
Page xi. ("[S]elf-represented litigants often have difficulty preparing complete pleadings, meeting procedural



1  
2 It is for this reason that, although I believe Mr. Weinstein filed the instant Motions to  
3 Compel as a vexatious litigation tactic, I am grateful that he did. It gives me a lawful and  
4 procedurally appropriate forum to fully explain the substantive issues to this Court and not have  
5 Mr. Weinstein be able to have this response stricken or denied on some procedural grounds that  
6 elevate form over justice.

7 As noted above, I am applying for a Writ of Supersedeas: "The issuance of a writ of  
8 supersedeas is not based on any statute, code section, or rule of court, but is within the inherent  
9 power of the court. Whether or not a writ should issue depends 'upon the special circumstances  
10 of each case' (*West Coast etc. Co. v. Contractors' etc. Board*, 68 Cal.App.2d 1, 6 [155 P.2d  
11 863])." (*internal citations omitted*).<sup>4</sup> Additionally, pursuant to my appeal for a Writ of Mandate,  
12 relevantly and as summarized in the Rutter Guide:

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

14 [1] No adequate remedy and irreparable injury...

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

21 [2] ... Additionally, the petitioner must demonstrate an abuse of discretion or  
22 respondent's failure to perform a nondiscretionary duty to act."<sup>5</sup>

23 It is the "special/exceptional circumstances" arising from the acts of counsel in this  
24 matter, affecting the judiciary, deceiving this Court and the perception of access to justice by the  
25 public in our judicial system that makes what was originally a very simple contractual dispute a  
26 case "of great public importance requiring prompt resolution..."<sup>6</sup>

27 Thus, assuming I am not crazy, I believe that if the irreparable harm that I am facing is  
28 requirements, and articulating their cases clearly to the judicial officer. These difficulties produce obvious  
challenges.")

<sup>4</sup> *Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 374–375 [40 Cal.Rptr. 352]

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

<sup>6</sup> Id.



1 allowed to pass, then as stated by the Supreme Court of California, public confidence in the  
2 judiciary will be eroded and this case "will reinforce an already too common perception that the  
3 quality of justice a litigant can expect is proportional to the financial means at the litigant's  
4 disposal." *Neary v. Regents of Univ. of California*, 3 Cal. 4th 273, 287, 834 P.2d 119, 127-28  
5 (1992).

6  
7 However, there is the second possibility, which is that I am simply not reasoning well and  
8 have had some form of mental or psychological impairment. And I am actually before this Court  
9 wasting this Court's precious judicial time and resources. This is, I am forced to conclude, a  
10 possibility, because December 12, 2017, when this Court denied my Motion for Reconsideration,  
11 was the worst day of my life. As explained below, I was 100% positive that when I appeared  
12 before this Court on that day, I would be able to explain my then-counsel's negligence at the  
13 December 7, 2017 TRO Motion hearing, this Court would change its position and issue the TRO.  
14 Instead, my Motion for Reconsideration was denied and, given my expectations of having "my  
15 day in court," I was in so much shock that I suffered a mini-stroke, a TIA, and had to go to the  
16 Emergency Room (see **Exhibit 1**; medical records from admission to Mercy Scripps Hospital).  
17 The next day, when my financial investor told me, as a result of the denial of my  
18 Reconsideration Motion, that he was going to cease funding my business and this litigation  
19 because he needed to "cut his losses," I went to his location uninvited and physically assaulted  
20 him. (See **Exhibit 2** - Supporting declaration of Joe Hurtado.) He was going to call the police  
21 and have me arrested. I will forever be grateful that he did not and instead called a medical  
22 doctor who found me to be a danger to myself and others (See **Exhibit 3**; Declaration of Dr.  
23 Carolyn Candido stating that I was a danger to myself and others and was suffering from Acute  
24 Stress Disorder).

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



1 the basis of my appeal. To be completely clear, I fully recognize that, especially if I am simply  
2 delusional, this Court has no obligation to me whatsoever to provide any reasoning.<sup>7</sup> But I ask  
3 the Court to please believe me when I say that I am incapable of expressing in written words here  
4 the everyday anguish I face thinking that I am losing everything of value in my life, that I am  
5 letting down my family, friends and business partners of over 20 years, and that I will soon be  
6 destitute due to Geraci's vexatious lawsuit and the negligent actions of counsel who failed to live  
7 up to their ethical obligations. I fear if I am not thinking clearly and there are legal, valid, and  
8 substantive reasons for the things that have happened, I may not be able to fully understand the  
9 legal concepts that justify such actions (however personally I disagree with them). A written  
10 opinion that I can slowly review and research the legal language and concepts of, analyzing my  
11 arguments below, would truly and sincerely be appreciated. It would, as perverse as it sounds, be  
12 a source of great solace to me. Understanding that Geraci's lawsuit against me has some  
13 modicum of merit would be a great relief to me and would take away what is the unfounded  
14 every day, relentless and intense rage I have against Geraci and counsel in this case and the  
15 despair that I feel at being unable to access justice because I cannot, with my limited time and  
16 resources, navigate the complexities of what is supposed to also be my judicial system.

### 17 III. MATERIAL FACTUAL BACKGROUND

#### 18 A. Summary of Sole Underlying and Case Dispositive Issue in this Matter (the "Real Issue")

19 In November of 2016, Petitioner and Respondent met and came to an oral agreement for  
20 the sale of Petitioner's Property to Respondent (the "November Agreement"). Materially, at the  
21

22 <sup>7</sup> See Nakamura v. Parker (2007) 156 Cal.App.4th 327, 335–336 [67 Cal.Rptr.3d 286, 290] ("Where, as here, a trial  
23 court is not explicitly required by law to state reasons for the decision rendered, the integrity of adjudication does  
24 not *necessarily* require an explanation; but that certainly does not mean a court *should* decline to provide any  
25 reasons for a ruling. "By and large it seems clear that the fairness and effectiveness of adjudication are \*336  
26 promoted by reasoned opinions. Without such opinions the parties have to take it on faith that their participation in  
27 the decision has been real, that the arbiter has in fact understood and taken into account their proofs and arguments.  
28 A less obvious point is that, where a decision enters into some continuing relationship, if no reasons are given the  
parties almost inevitably guess at reasons and act accordingly. Here the effectiveness of adjudication is impaired, not  
only because the results achieved may not be those intended by the arbiter, but also because his freedom of decision  
in future cases may be curtailed by the growth of practices based on a misinterpretation of decisions previously  
rendered." (Fuller, *The Forms and Limits of Adjudication* (1978) 92 Harv. L.Rev. 353, 388.)")



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

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

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

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



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

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

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

20 B. Additional Material Background

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



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

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

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

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



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

5 C. The TRO Motion Hearing

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

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

25 In other words, the very action that Petitioner sought to prevent was *de facto* approved of  
26 by the trial court. As explained below, withdrawing and/or sabotaging the CUP application is,  
27 from Respondent's perspective, the best and only reasonable course of action to take in order to  
28



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

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

10 D. Ethical Violations by Counsel

11 After the denial of my Motion for Reconsideration, I made numerous calls to the State  
12 Bar of California and calls to its Ethics Hotline regarding the actions of Mr. Demian. Based on  
13 my descriptions of what took place at the TRO Motion hearing, I was directed to various ethics  
14 opinions and judicial cases (set forth below), that support the position that Mr. Demian was, at  
15 the very least, professionally negligent. Of note, it appears, *all* counsel present violated their  
16 ethical duties that day when they failed to raise with your Honor the fact that my counsel had  
17 been negligent in raising with this Court the single most material and dispositive piece of  
18 evidence that was in the moving papers. As noted in one of the ethics opinions, referencing the  
19 following Court of Appeals case:

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

25 I will, after submission of this pleading to this Court, begin compiling my email records  
26 with Mr. Demian, Mr. Weinstein and Ms. Austin and intend to file complaints against each of  
27 them with the State Bar of California regarding their actions in this case. As to Mr. Weinstein

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

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

3 D. Emotional and Financial Pressure

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

15 ARGUMENT

16 A. Due to Counsel's Negligence, the Court Incorrectly Denied my TRO Motion

17 "[T]he elements of a cause of action for breach of contract are (1) the existence of the  
18 contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and  
19 (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th  
20 811, 821 (2011))

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

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

26 As noted, Geraci has never contested the Confirmation Email and, thus, Geraci's  
27

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



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

6  
7 b. Geraci and Berry’s Reliance on the Statute of Frauds and the Parol Evidence Rule Is  
8 Misplaced

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

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

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

2 c. Cotton Will Be Irreparably Harmed if the Court Does Not Grant the Injunction

3 It is clear based on the above that Geraci brought this action with no probable cause  
4 attempting to acquire the property through a vexatious lawsuit. However, at some point, any  
5 party who brings a lawsuit with no probable cause will realize, as the case progresses, that the  
6 trial court will be able to determine what is really going on. At that point, any such party must  
7 take what actions they can to mitigate their actions. I realized that, which was the basis of my  
8 TRO request. I believed I would ultimately prevail on the merits of my case, but wanted to  
9 ensure that Geraci could not withdraw and/or sabotage the CUP application to mitigate his  
10 damages to me.

11 Ahbay Schweitzer is an architect, a building designer and the owner of Techne, a local  
12 design firm that was engaged by Larry Geraci to acquire the CUP at the Property. Schweitzer is  
13 Geraci's exclusive agent. Per Schweitzer's declaration regarding the issuance of the CUP at the  
14 Property, he has:

15 "Been engaged in the application process for this CUP application for  
16 approximately twelve (12) months so far...[and] [t]here is one major issue left to  
17 resolve regarding a street dedication. I expect this issue to be resolved within the  
18 next six (6) weeks." (See Exhibit 7 - Declaration of Abhay Schweitzer.)

19 Schweitzer executed his declaration on October 20, 2017. Thus, it is possible that Geraci,  
20 now realizing that at this point the truth would come out, may already have taken steps to  
21 covertly sabotage the CUP application to prevent it from being issued. This is my biggest fear.  
22 Though I am distressed every day because of this entire situation, the denial of the TRO is what  
23 is driving me literally insane – the fact that every day that has passed since the TRO motion was  
24 denied has made it clear to Geraci that he is going to lose and he has had so much time to take  
25 covert actions to sabotage the CUP application in a way that will not be possible to discern and  
26 will prevent him from being legally liable. By doing so, if I ultimately prevail in this lawsuit, his  
27 damages will have been mitigated by millions.

28 I note, per Mr. Schweitzer's declaration, the second most important and final item that



1 will be required to issue the CUP is a public hearing which he estimates to take place in March.  
2 In other words, Geraci still has the ability to sabotage the CUP application before this matter is  
3 even scheduled for trial.

4 The harm I face is all-encompassing, affecting my professional, personal, and every  
5 aspect of my life. Those who are close to me have seen me slowly be worn down, but the mental  
6 and psychological stress is real. The negative effect to me and everything of import in my life is  
7 read. Please see my supporting declaration submitted herewith, as well as those of (i) Don Casey,  
8 (ii) Michael Kevin McShane, (iii) Shawna Salazar, (iv) Sean Major, (v) Cindy Jackson, (vi)  
9 James Whitfield, (vii) Michael Scott McKim and (viii) Cheryl Morrow (all attached hereto as  
10 **Exhibit 15**)

11  
12 **B. Writ of Supersedeas**

13  
14 “A writ of supersedeas may be granted only upon a showing that (a) appellant would  
15 suffer irreparable harm absent the stay, and (b) the appeal has merit. [See *Smith v. Selma*  
16 *Community Hosp.* (2010) 188 CA4th 1, 18, 115 CR3d 416, 432].<sup>10</sup>

17 As argued above, (i) I will suffer irreparable harm if Geraci is allowed to withdraw and/or  
18 covertly sabotage the CUP application and (ii) my appeal has merit because, but for Mr.  
19 Demian’s incompetence, this Court would have approved my TRO application.<sup>11</sup>

20  
21 “CCP § 923 grants the appellate court virtually unlimited discretion to make orders to  
22 preserve the status quo in protection of its own jurisdiction, including issuance of a stay  
23 order other than supersedeas. [CCP § 923; *People ex rel. San Francisco Bay*  
*Conservation & Develop. Comm’n v. Town of Emeryville* (1968) 69 C2d 533, 538-539,  
72 CR 790, 793]

24 (a) [7:274] **“Stay” to preserve status quo following denial of TRO or injunction:**  
25 Where a temporary restraining order or injunction has been denied and the defendant  
26 threatens to perform the act in question, a stay of the trial court order obviously will not  
“preserve the status quo.” Here, the appellate court has authority to issue a “stay” (as

27  
28 <sup>10</sup> E.Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E

<sup>11</sup> See Declarations of Darryl Cotton

1 distinguished from supersedeas) enjoining defendant from doing the action in question  
2 pending the appeal. [CCP § 923—court of appeal may “make any order appropriate to  
3 preserve the status quo” during pendency of an appeal; *People ex rel. San Francisco Bay*  
4 *Conservation & Develop. Comm’n v. Town of Emeryville*, supra, 69 C2d at 536-539, 72  
5 CR at 792-794]”<sup>12</sup>

6 At the TRO hearing, your Honor reviewed the proposed TRO order and asked Mr.  
7 Weinstein what would be wrong with preventing his client from withdrawing the CUP  
8 application on the Property. Mr. Weinstein replied something to the effect that his client should  
9 not be prevented from doing as he wishes. (See **Exhibit 8** Declarations of Elizabeth Emerson  
10 (stating “At the hearing, the judge asked Mr. Weinstein what would be wrong with preventing  
11 the withdrawal of the CUP application. Mr. Weinstein replied something about his client having  
12 freedom to do what he wanted.”) and Mr. Mass (stating “Mr. Demian, counsel for Mr. Cotton,  
13 did not raise any email arguments with the Court.”))

14 In other words, given that Geraci brought forth this action to prevail with vexatious  
15 tactics and not anticipating I would be able to secure financial backers to hire counsel, he would  
16 at some point realize he will lose this case on the merits. In that case, knowing he would be liable  
17 for damages, but that those damages are exponentially higher if the CUP is issued, he would be  
18 incentivized to withdraw and/or through subterfuge have the CUP sabotaged so as to limit his  
19 liability. Thus, this Court unknowingly *de facto* allowed Geraci to take an action that is in his  
20 best interest but is unjust towards me – the destruction of the “fruits” that I would ultimately seek  
21 in the Court of Appeals if I lost this action or if he simply delays this action long enough to  
22 covertly sabotage the CUP application while he still has exclusive control.

23 Thus, even assuming I am incorrect about some facts and law above, allowing Geraci to  
24 withdraw the CUP as this Court allowed would deprive the COA of its jurisdiction and CCP §  
25 923 is perfectly on point here because it “grants the appellate court virtually unlimited discretion  
26 to make orders to preserve the status quo in protection of its own jurisdiction, including issuance  
27 of a stay order other than supersedeas.”

28 C. Writ of Mandate

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<sup>12</sup> E.Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E



1 A writ of mandate is appropriate where a beneficially interested petitioner has no plain,  
2 speedy and adequate remedy at law, and Respondent has a clear, present and ministerial duty, or  
3 has abused its discretion. (Code of Civ. Proc., § 1085; *see, e.g. Robbins v. Superior Court* (1985)  
4 38 C3d 199, 205 ("*Robbins.*")) For the reasons argued above, this Court should reverse its  
5 position on the TRO Motion and direct the City to transfer control of the CUP application to me.  
6 Or, at least, as requested below, appoint a receiver to manage the CUP application until the  
7 merits of this action are finally adjudicated and prevent Geraci from sabotaging the CUP  
8 application.

9 D. Ethical Considerations

10 As noted above, the case law language below cited to in the ethical opinions of the State  
11 Bar of California, appears to be completely applicable here to the actions of counsel:  
12

13 1. Per the Supreme Court of California, "Business and Professions Code section 6128  
14 provides in relevant part: 'Every attorney is guilty of a misdemeanor who ... is guilty of any  
15 deceit or collusion, or consents to any deceit or collusion, with intent to deceive ... any party.'  
16 "That section [6128] and subdivision impose a duty on attorneys to 'employ ... such means only  
17 as are consistent with truth, and never to seek to mislead the judge or any judicial officer by any  
18 artifice or false statement of fact or law.'"<sup>13</sup>

19 2. The State Bar of California Standing Committee on Professional Responsibility and  
20 Conduct Formal Opinion No. 2013-189 discusses "Deceitful Conduct" and cites to *Datig v. Dove*  
21 *Books, Inc.*, a Court of Appeals case that states the following (all emphasis in original text):

22 ***Defense Counsel Failed to Do His Duty as an Officer of the Court and Acted in Direct***  
23 ***Violation of the Trial Court's Local Rules***

24 Business and Professions Code section 6068 provides, in relevant part: "It is the duty of  
25 an attorney to do *all* of the following: [¶] ... [¶] (b) *To maintain the respect due to the*  
26 *courts of justice and judicial officers.* [¶] (c) *To counsel or maintain such actions,*  
*proceedings, or defenses only as appear to him or her legal or just, except the defense of a*

27 <sup>13</sup> *Silberg v. Anderson* (1990) 50 Cal.3d 205, 219 [266 Cal.Rptr. 638, 786 P.2d 365], as  
28 modified (Mar. 12, 1990)



1 person charged with a public offense. [¶] (d) To *employ*, for the purpose of maintaining  
2 the causes confided to him or her *such means only as are consistent with truth, and never*  
3 *to seek to mislead the judge or any judicial officer by an artifice or false statement of fact*  
4 *or law.*" (Italics added.)

5 Further, the Rules of Professional Conduct require that a member of the State Bar "[s]hall  
6 not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of  
7 fact or law." (Rules Prof. Conduct, rule 5-200(B).) (4) "'Honesty in dealing with the  
8 courts is of paramount importance, and *misleading a judge is, regardless of motives, a*  
9 *serious offense.*'" (*Paine v. State Bar* (1939) 14 Cal.2d 150, 154 [93 P.2d 103], italics  
10 added; see also *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162-163 [162 Cal.Rptr.  
11 458, 606 P.2d 765]; *Garlow v. State Bar* (1982) 30 Cal.3d 912, 917 [180 Cal.Rptr. 831,  
12 640 P.2d 1106].) "Counsel should not forget that they are officers of the court, and while  
13 it is their duty to protect and defend the interests of their clients, *the obligation is equally*  
14 *imperative to aid the court in avoiding error and in determining the cause in accordance*  
15 *with justice and the established rules of practice.*" (*Furlong v. White* (1921) 51 Cal.App.  
16 265, 271 [196 P. 903], italics added.)

17 [...] We therefore find it is necessary to state, explicitly, that although a  
18 misrepresentation to the court may have been made negligently, not intentionally, it is  
19 still a misrepresentation, and once the attorney realizes that he or she has misled the  
20 court, even innocently, he or she has an *affirmative duty* to immediately inform the court  
21 and to request that it set aside any orders based upon such misrepresentation; also,  
22 counsel should not attempt to benefit from such improvidently entered orders. As the  
23 court stated in *Furlong v. White*, an attorney has a duty not only to tell the truth in the  
24 first place, but a duty to "*aid the court in avoiding error and in determining the cause in*  
25 *accordance with justice and the established rules of practice.*" (51 Cal.App. at p. 271,  
26 italics added.) Observance of this duty, we might add, prevents the waste of judicial  
27 resources, and the opposing party's time and money.<sup>14</sup>

28 3. The State Bar of California Standing Committee on Professional Responsibility and  
Conduct Formal Opinion No. 2013-189 also states:

Even when no duty of disclosure would otherwise exist, "where one does speak he must  
speak the whole truth to the end that he does not conceal any facts which materially qualify  
those stated. [Citation.] One who is asked for or volunteers information must be truthful, and  
the telling of a half-truth calculated to deceive is fraud." *Cicone v. URS Corp.* (1986) 183  
Cal.App.3d 194, 201. See *Goodman*, supra, 18 Cal.3d at pp. 346-347 and *Shafer v. Berger,*  
*Kahn, Shafston, Moss, Figler, Simon & Gladstone* (2003) 107 Cal.App.4th 54, 72 [131  
Cal.Rptr.2d 777].

See also *Vega*, supra, 121 Cal.App.4th at p. 294 ("it is established by statute 'that intentional  
concealment of a material fact is an alternative form of fraud and deceit equivalent to direct

<sup>14</sup> *Datig v. Dove Books, Inc.* (1999) 73 Cal.App.4th 964, 980-981 [87 Cal.Rptr.2d 719], as modified on denial of  
reh'g (Aug. 13, 1999)



1 affirmative misrepresentation' [citations omitted] . . . In some but not all circumstances, an  
2 independent duty to disclose is required; active concealment may exist where a party '[w]hile  
3 under no duty to speak, nevertheless does so, but does not speak honestly or makes  
4 misleading statements or suppresses facts which materially qualify those stated.'" [Fn.  
5 omitted.]]; *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 97 [111 Cal.Rptr.2d 711];  
6 *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 608 [225 Cal.Rptr. 624].

7 Footnote 14 states:

8 Cal. State Bar Formal Opn. No. 1996-146 ("A lawyer acts unethically where she assists  
9 in the commission of a fraud by implying facts and circumstances that are not true in a  
10 context likely to be misleading."); cf. *Datig*, supra, 73 Cal.App.4th at pp. 980-81 (once  
11 attorney realized he had negligently misled the court, the attorney had an affirmative duty  
12 to immediately notify the court).

#### 13 E. Application of Ethical Considerations

14 Your Honor, this section is the part that makes me sound like a conspiracy nut. Below I  
15 describe facts and provide documentation that can be independently verified. I respectfully  
16 request that, notwithstanding how outlandish my claims are, you please consider that maybe, just  
17 maybe, they are true and that numerous officers of the court have engaged in unethical behavior.

18 **Attorney Gina Austin.** First, Austin undisputedly knows that the Receipt is not the final  
19 agreement for my Property as she is the attorney that, after November 2, 2016, was drafting  
20 various versions of the purchase agreement for my property. She is named numerous times in  
21 emails and texts between myself and Geraci. (See **Exhibit 4**.)

22 On March 6, 2017, Geraci texted me "Gina Austin is there she has a red jacket on it you  
23 want to have a conversation with her." (See **Exhibit 9**; all of the text messages between Geraci  
24 and myself including the quoted one above, all of which also make clear that Geraci was  
25 stringing me along and make numerous drafts to contracts for the purchase of my property after  
26 November 2016.) Austin was the headnote speaker at a local cannabis event on that day. I was  
27 unable to make the event, but my Investor Mr. Hurtado was and he spoke with Austin briefly,  
28 letting her know that I would not be attending. (See **Exhibit 2**; Declaration of Joe Hurtado,  
Paragraph 4.)

Second, at the TRO Motion hearing, per the Supreme Court and COA language above,  
Austin had affirmative duty to inform Your Honor that Mr. Demian had been negligent in failing



1 to bring to your attention the Confirmation Email.

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

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

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

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

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



1 associated CUP application pending before the City of San Diego for \$500,000.”) As that  
2 agreement makes clear, the condition precedent for closing is the successful resolution of this  
3 lawsuit. I am assuming that Mr. Weinstein wants me to engage in some kind of legal  
4 machinations by which I can void my agreement with the Third-Party Buyer so I can transfer the  
5 Property to Geraci. Even if there were some legal mechanism that would allow that (and it does  
6 not appear to me that it should be allowed in any circumstance as it would violate the implied  
7 covenant of good faith and fair dealing in every contract), I would not do so. Even if lawful, it is  
8 not ethical and it would make me just as bad as Geraci – the very idea of which is nauseating.

9       **Attorney David Demian.** First, Mr. Demian started off his representation on fraudulent  
10 grounds. My Investor, Mr. Hurtado negotiated a monthly \$10,000 a month payment with him for  
11 his services. It was expressly discussed and negotiated that we would speedily and quickly  
12 resolve my legal matters as quickly as possible and that the \$10,000 would not be a limitation.  
13 However, when he sent me the retainer agreement, it did not contain the \$10,000 monthly  
14 financing concept. Mr. Hurtado spoke with Mr. Adam Witt, Mr. Demian’s junior associate, who  
15 informed him that Mr. Demian did not want to put such a provision in the agreement because his  
16 partners would not like it. However, that he should not worry because so long as \$10,000 was  
17 being paid, that my representation would not be impeded. Mr. Hurtado pushed back hard, being a  
18 former attorney, he knew that ultimately what mattered was the language. Mr. Witt spoke with  
19 Mr. Demian and called Mr. Hurtado and myself back, they proposed, and I am sure that they  
20 never would have anticipated that they would find themselves in this position, that execute the  
21 retainer agreement and that I note in the cover email our \$10,000. I am assuming that they filed  
22 the retainer agreement with their firm Mr. Demian did not record the email reflecting our  
23 \$10,000 a month agreement. At that point, the reasoning that they provided made sense, that so  
24 long as \$10,000 was paid, that they would continue their services. I understand that businesses  
25 carry balances with vendors and clients. However, what is now apparent, is that Mr. Demian did  
26 not intend to fully represent me as he promised. He was intending to only do up to \$10,000 a  
27 month of work. Either that, or he intended to fraud his partners. I do not know the words, but one  
28



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

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

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



1 cloud title. Specifically, the statute allows for a judgement on the merits similar to summary  
2 adjudication. Given the facts of my case, this motion should have been pursued by any  
3 competent attorney who was aware of these facts. Mr. Austin is a criminal defense attorney who  
4 has only agreed to help upon the favorable resolution of my appeal. How is it that a criminal  
5 defense attorney within two days of hearing the facts of my case can discover a motion that can  
6 quickly and speedily allow this Court to get to the merits of the case, avoiding all of the  
7 vexatious tactics employed by Geraci, such as these Motions to Compel that are before the Court  
8 and which are completely frivolous (there is absolutely no more information that can be provided  
9 through discovery that will contradict the Confirmation Email.) In other words, this provides  
10 additional support that Mr. Demian was negligent and/or purposefully fraudulent in his actions  
11 towards me as he was seeking not seeking to end this litigation quickly, rather, he was hoping to  
12 prolong it to increase his legal fees. As of today, Mr. Demian has been paid approximately  
13 \$60,000. I note, at \$10,000 a month as per our email agreement. And, on January 10, 2018, Mr.  
14 Demian emailed me a bill for his services up to the TRO Motion hearing – he is requesting  
15 \$91,943.45 in addition to the approximate \$60,000 he has already received. (See **Exhibit 12**;  
16 invoices from FTB for \$91,943.45.)

17 Your honor, this is not just. His negligence and active deceit are worthy of nothing but  
18 contempt. I implore you to exercise your powers to the fullest extent to grant me what relief you  
19 can against Mr. Demian for his actions described herein.

20 **The City Attorneys**

21 “The notion that government might be “conspiring” to violate the rights of citizens is  
22 more apt to invite derision than concern... [y]et, when conspiracy is understood simply as  
23 an agreement to do wrong, the possibility of that government might conspire against  
24 citizens is not only plausible but likely. Contemporary government often operates through  
25 bureaucratic consensus, which necessarily involves the joint actions of multiple parties.  
26 By its nature then governmental decision-making that goes awry is often amenable to  
27 characterization as a “conspiracy.” Most practitioners recognize that federal law  
28 authorizes civil actions against persons who, acting under color of law, directly violate  
the civil rights of others. These suits are typically brought under the now familiar section  
1983 of title 41.

It is well known from a jurisprudence perspective that the City is anti-cannabis.<sup>15</sup> The

<sup>15</sup> See County of San Diego v. San Diego NORML, 165 Cal. App. 4<sup>th</sup> 798, 81 in which two California counties (San Diego and San Bernardino challenged the California Compassionate Use Act (Proposition 215) and subsequent



1 create a false record of what took place in order to limit his liability. However, I respectfully  
2 submit to this Court, now that you have reviewed the Confirmation Email and the *Monarco* case,  
3 it is simply not credible to believe the City attorney told him his oral argument was "excellent."  
4 Alternatively, I respectfully request that this Court ask the City attorney on January 25<sup>th</sup> what she  
5 told him after the oral hearing. I believe this to be incredibly important as Mr. Demian without a  
6 doubt failed his professional obligations by failing to raise the Confirmation Email. He then  
7 failed his ethical obligations by failing to inform the court of his negligence. Lastly, his email  
8 stating that Mr. Hurtado is lying and that his oral argument was "excellent" actually crosses the  
9 line and goes from negligence to, as noted above, deceit. I implore this Court to get to the bottom  
10 of this issue. My retainer agreement with Mr. Demian has an arbitration provision that prevents  
11 me from suing him for legal malpractice. "*Honesty in dealing with the courts is of paramount*  
12 *importance, and misleading a judge is, regardless of motives, a serious offense.*" (*Paine v. State*  
13 *Bar* (1939) 14 Cal.2d 150, 154 [93 P.2d 103], italics added; see also *Di Sabatino v. State*  
14 *Bar* (1980) 27 Cal.3d 159, 162-163 [162 Cal.Rptr. 458, 606 P.2d 765]; *Garlow v. State*  
15 *Bar* (1982) 30 Cal.3d 912, 917 [180 Cal.Rptr. 831, 640 P.2d 1106].) Mr. Demian here is not just  
16 seeking to mislead, he is attempting active deceit. This goes beyond serious. Please your honor,  
17 as an officer of the court he was beholden to you to do what was right. Instead of making things  
18 right, he sent me an email stating he was withdrawing from my case before even speaking with  
19 me! He set in motion a set of events that compounded the irreparable harm to me.

20  
21 Fourth, on December 11, 2017, a day before oral hearing on my Motion for  
22 Reconsideration, that I was positive would be approved, I spoke with another local attorney  
23 named Jacob Austin as I was looking for new counsel. I had previously been introduced to Mr.  
24 Austin, who was tentatively planning to help me with my various legal matters before,  
25 unfortunately I ultimately chose to go with Mr. Demian given what appeared to be his superior  
26 expertise. Here is what is important to note: Mr. Austin brought to my attention the ability to  
27 bring a motion to expunge a *lis pendens* pursuant to a section in the CCP. The purpose of this  
28 motion is to speedily address meritless lawsuits that seek to attach real property and unlawfully



1 City Attorney's Prosecutorial office, though while not germane to these Motions to Compel, but  
2 described in my supporting declaration, took advantage of a plea agreement I entered into and  
3 extorted \$25,000 from me (the consequences of which are described and detailed in the Secured  
4 Litigation Investment Agreement). It also appears to me the City's Development Services  
5 violated my Constitutional due process rights by failing to provide notice to me and continuing  
6 to process the CUP application after explicitly telling me that they would not until they received  
7 a grant deed from me, which I never provided, and working with Geraci on the CUP application.  
8 Furthermore, that the City, when it filed its Answer to my application for a Writ of Mandate,  
9 after the TRO Motion hearing knowing Demian had been negligent, seeking legal fees and  
10 accusing me, among other things, of being guilty of "unclean hands," that is also is violating my  
11 rights because the City knew there was no probable cause against me.

12 Thus, it appears to me, that I *could* file a case against the City tomorrow in federal court  
13 pursuant to Section 1983 alleging a conspiracy against me by the City because of my pro-  
14 cannabis political activism. I have no desire to do so. I want to end this endless, soul-crushing  
15 litigation. As described below, I respectfully request this Court's help.

#### 16 CONCLUSION

17 The Supreme Court of California case of *Neary v. Regents of University of California* has  
18 become my last hope and I have read and re-read this case as it is my only source of strength  
19 right now. Ironically, it is for this reason that I have requested from this Court a written opinion  
20 regarding what I know are my amateurship attempts at legal formatting, writing and reasoning. If  
21 I truly am culpable somehow and Geraci is entitled to my Property, I will similarly carry this  
22 Court's decision with me to prevent me from acting out on my anger against Geraci and  
23 opposing counsel. (Even if I am crazy, Mr. Demian is worthy of contempt under any scenario.)

24 The opinion and the dissent in *Neary* discuss the best way to effectuate justice in our  
25 society taking into account the practical realities of the world we all live in. I empathize with  
26 George Neary, the plaintiff in the case, as did the Supreme Court of California, it stated:

27  
28 legislation requiring counties to issue identification cards to qualified patients and primary caregivers, on the ground  
that these measures were preempted by provisions of the federal Controlled Substances Act.



1 His plea is sympathetic: "Neary has spent more than twelve years in an expensive, time-  
2 consuming, emotionally wrenching, and destructively distracting struggle which has  
3 included enough twists, turns, setbacks and victories for a novel. He has finally resolved  
4 that struggle through negotiation and voluntary agreement." Thwarting the settlement  
5 would frustrate the parties' mutual desire for an immediate end to their now 13- year-old  
6 dispute. The parties have pummeled each other long enough and have staggered to their  
7 respective corners. **We choose to give them help, not the prospect of further battering.**

8 This statement holds great power for me. The Supreme Court recognized Mr. Neary's  
9 extraordinary circumstances and the unique situation his case represented to substantive justice.  
10 They recognized his plea as being "sympathetic" and I hope this Court can recognize the  
11 extraordinary circumstances I am in and do the same for me. *Neary* also states:

12 In ordinary civil actions such as the one before us, the parties come to court seeking  
13 resolution of a dispute between them. The litigation process they encounter is fraught  
14 with complexities, uncertainties, delays, and risks of many kinds. Different judges and  
15 juries may respond in different ways to the same evidence and argument. Public judicial  
16 proceedings may result in adverse publicity and unwanted disclosure of previously  
17 confidential information. Damage awards (or failure to recover) may cause financial  
18 hardship or ruin. These observations are not original. "More than a century ago, Abraham  
19 Lincoln gave the following advice: 'Discourage litigation. Persuade your neighbors to  
20 compromise wherever you can. Point out to them how the nominal winner is often a real  
21 loser-in fees, expenses, and waste of time.' This was sage advice then and remains so  
22 now." (Lynch, California Negotiation and Settlement Handbook, *supra*, p. vii (foreword  
23 by California Supreme Court Chief Justice Malcolm M. Lucas).)<sup>16</sup>

24 [...] The primary purpose of the public judiciary is "to afford a forum for the settlement  
25 of litigable matters between disputing parties." (\*282 *Vecki v. Sorensen* (1959) 171  
26 Cal.App.2d 390, 393 [340 P.2d 1020].) We do not resolve abstract legal issues, even  
27 when requested to do so. We resolve real disputes between real people. (*Pacific Legal  
Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104,  
28 655 P.2d 306].) This function does not undermine our integrity or demean our function.  
By providing a forum for the peaceful resolution of citizens' disputes, we provide a  
cornerstone for ordered liberty in a democratic society.

29 The Court of Appeal's concern for the integrity of trial court judgments is flawed in other  
30 respects. First, the notion that such a judgment is a statement of "legal truth" places too  
31 much emphasis on the *result* of litigation rather than its *purpose*. "In all civil litigation,  
32 the judicial decree is not the end but the means. At the end of the rainbow lies not a  
33 judgment, but some action (or cessation of action) by the defendant that the judgment  
34 produces-the payment of damages, or some specific performance, or the termination of  
35 some conduct. Redress is sought *through* the court, but *from* the defendant. ... The real  
36 value of the judicial pronouncement-what makes it a proper judicial resolution of a 'case

37  
38 <sup>16</sup> *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 280 [10 Cal.Rptr.2d 859,  
834 P.2d 119]



1 or controversy' rather than an advisory opinion-is in the settling of some dispute *which*  
2 *affects the behavior of the defendant towards the plaintiff.*" (*Hewitt v. Helms* (1987) 482  
3 U.S. 755, 761 [96 L.Ed.2d 654, 661, 107 S.Ct. 2672], original italics.)<sup>17</sup>

4 Your Honor, I respectfully submit to you the language above and note that Geraci's  
5 actions make a mockery of the Supreme Court of California and this Court. Above, the Supreme  
6 Court of California discusses the challenges to individuals "[i]n ordinary civil actions" and that  
7 the Courts "resolve[s] real disputes between real people," this is not an "ordinary" action in  
8 which there is a "real" dispute here. It is a fabricated one. "Redress is sought *through* the court,  
9 but from the defendant." This vexatious lawsuit makes a mockery of the very basis of our  
10 judicial system – it is a blatant unlawful attempt by Geraci to acquire my Property from the  
11 Court and our judicial system. Geraci knew this case had no merit, but he brought it anyway  
12 knowing my financial predicament, of his partial making by failing to provide funds he promised  
13 and that he knew I was relying on, and filing a *lis pendens* to prevent me from entering into other  
14 agreements. Had I not entered into an agreement with Mr. Martin the same day I had terminated  
15 the agreement with Geraci, given that Weinstein served me the next day with the Complaint and  
16 *lis pendens*, I would not have been able to legally enter into that agreement and I would have lost  
17 everything by now. But for my desperate need for capital at the time, Geraci stringing me along  
18 (as our email communications make clear) and Weinstein's legal practice tactics would have  
19 been successful and I would not be before this Court attempting, however inarticulate, to see  
20 justice done.

23 Your Honor it is already after 11:00 am and will already late and running to get this  
24 printed to submit this pleading to your Court downtown. Please forgive the failings herein. I  
25 would request a continuance, but I cannot, because it although shames me to say this in a  
26 permanent public record, I am compelled to do so - there are people depending on me: I have  
27

28 <sup>17</sup> *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 281–282 [10 Cal.Rptr.2d 859, 834 P.2d 119]

1 become estranged from my partner, I am behind on payroll, debts, and I am living at the  
2 Property. This case left me destitute. I do the best I can to keep up appearances, but I cannot run  
3 a commercial business with no capital and a *lis pendens* on the Property. I have absolutely no  
4 funds. I long ago maxed out any and all financial sources of help. Attached hereto as **Exhibit 13**  
5 are the water and electrical bills that are due, which are scheduled to be turned off tomorrow. I  
6 have already asked for repeated extensions. I do not know whether I will have electricity when I  
7 see you on Thursday. If my father were not the first note holder, I would already not even have a  
8 place to stay (see **Exhibit 14**; Declaration of Dale L. Cotton, stating "were this a normal business  
9 relationship, I would have foreclosed on this property...")  
10

11 Please, in the interest of real, substantive justice, investigate my allegations here. I clearly  
12 understand how outrageous they seem. Please do not do not elevate form over substance and  
13 deny this pleading or the relief you can grant me on procedural, non-substantive grounds. I  
14 implore you to use your power to its fullest extent to grant me whatever relief that you can,  
15 which I do not even know what it is, so I cannot ask for it. I understand that you must vet my  
16 allegations herein as to Gina Austin and Micahel Weinstein. But, as to Mr. Demian, he is clearly  
17 culpable for failing to raise the Confirmation Email at the oral hearing, for failing to let you  
18 know that he did so in the aftermath, and, blatantly attempting to create a false record to deceive  
19 this Court. I ask that you please set in place whatever motion is necessary to sanction him.  
20  
21

22 "Violation of statewide rules of court and/or local rules is sanctionable by payment of the  
23 opposing party's reasonable expenses and counsel fees. (Cal. Rules of Court, rule 227.)  
24 Furthermore, use of sanctions against both attorneys and clients has been commended by  
25 our Supreme Court as an appropriate method for dealing with unjustified litigation.  
26 (*Sheldon Appel Co. v. Albert & Olier* (1989) 47 Cal.3d 863, 873-874 [254 Cal.Rptr. 336,  
27 765 P.2d 498].) (3c) Based on our review of this record, it appears that defense counsel  
28 violated several statewide rules of court and local rules, and that these violations resulted  
in unnecessary litigation and cost to plaintiff and her attorney in time and money. We  
therefore remand this matter to the trial court to consider, and, if appropriate, award



1 sanctions against defendants and/or their attorneys and in favor of plaintiff.”<sup>18</sup>

2 “[I]t is well established that California’s Constitution provides the courts, including the  
3 Courts of Appeal, with inherent powers to control judicial proceedings. (Cal. Const., art. VI, §  
4 1; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267 [279 Cal.Rptr. 576, 807 P.2d  
5 418]; *Keeler v. Superior Court* (1956) 46 Cal.2d 596, 600 [297 P.2d 967].) To the same effect,  
6 Code of Civil Procedure section 128, subdivision (a)(8) authorizes every court ‘[t]o amend and  
7 control its process and orders so as to make them conform to law and justice.’ This provision is  
8 consistent with and codifies the courts’ traditional and inherent judicial power to do whatever is  
9 necessary and appropriate, in the absence of controlling legislation, to ensure the prompt, fair,  
10 and orderly administration of justice.”<sup>19</sup> (*Neary v. Regents of University of California* (1992) 3  
11 Cal.4th 273, 276–277.)  
12

13  
14 Your Honor, I conclude with a plea, I realize that you are an arbitrator and must remain  
15 impartial. However, this Court is meant to give justice and vindicate the rights of the wronged.  
16 At the Court hearing this Thursday, unless Austin desires to perjure herself, you can ask her if  
17 she drafted the purchase agreements in early 2017, thereby reflecting her knowledge that the  
18 November 2016 agreement was not a final purchase agreement as Geraci and Weinstein allege.  
19 At the hearing, you can ask Weinstein why, given this Court’s ruling denying his demurrer, he  
20 has continued to prosecute this case that has no factual or legal basis. I realize that my requests  
21 may be excessive, but, I respectfully note the following in the hopes that it supports my requests  
22 here. In *Ross v. Figueroa* (2006) 139 Cal.App.4th 856; 43 Cal. Rptr. 3d 289, the Court of Appeal  
23 [explicitly recognized the necessity and approved active judicial behavior in providing  
24 affirmative assistance to *pro se* clients] such as myself: “the judge cannot rely on the *pro per*  
25  
26

27 <sup>18</sup> *Datig v. Dove Books, Inc.* (1999) 73 Cal.App.4th 964, 982–983 [87 Cal.Rptr.2d 719], as  
28 modified on denial of reh’g (Aug. 13, 1999)

<sup>19</sup>



1 litigants to know each of the procedural steps, to raise objections, to ask all the relevant questions  
2 of witnesses, and to otherwise protect their due process rights.”

3 Lastly, I sincerely believe that this case also represents something larger than myself and  
4 that if the damage and harm caused to me by Geraci and perpetuated and augmented by the acts  
5 of counsel as described above, including their manipulations of this Court, are allowed to pass,  
6 then it will prove that the concern articulated by Justice Kennard in *Neary* in 1992 has ceased to  
7 be “an already too common perception,” but has in fact become reality and “the quality of justice  
8 a litigant can expect is proportional to the financial means at the litigant's disposal.” *Neary v.*  
9 *Regents of University of California* (1992) 3 Cal.4th 273, 287 (emphasis added).  
10  
11

12 Dated: January 22, 2017

13  
14 By: 

DARRYL COTTON

16  
17 Verification: I, Darryl Cotton, verify that all  
18 statements herein made that declare actions or  
19 beliefs as to myself are true and correct and I  
20 declare under penalty of perjury under the  
21 State of California that the foregoing is true  
22 and correct.

23  
24 By: 

DARRYL COTTON

25  
26 I also verify and confirm that all exhibits  
27 attached hereto are true and correct copies as  
28 stated.



EXHIBIT I

Pacific Emergency Providers - Scripps Mercy Hospital  
4077 5th Ave • San Diego, CA 92103 • Tel: (619) 886-3800

Michael Amador, NP • DEA #: MA3334048  
Cora Bergamio, MD • DEA #: FB8283242  
Chad M Bernhardt, DO • DEA #: FB0377348  
David Brenner, MD • DEA #: FB8255683  
Paul Chiller, MD • DEA #: FC0390839  
Elizabeth Christianson, NP • DEA #: MK3775891  
Rebekah Cook, NP • DEA #: MC2872710  
Tracie Gauder, NP • DEA #: MG1880466  
Mark Keedy, NP • DEA #: MK0917681  
Haleigh Kotter, MD • DEA #: FK0067537  
Nicola Martinez, NP • DEA #: MR2117687  
Gary R. Polifues, MD • DEA #: BP8080388  
Alexandra Prieto, NP • DEA #: MP3889028  
Genessa Rippstein, NP • DEA #: MR1794646  
Julie Sullivan, MD • DEA #: FB2037081  
Kyle Venetosa, MD • DEA #: FV8419385  
Thomas Violas, PA • DEA #: MV0823080  
Katie Zlotnick, NP • DEA #: MZ3338232

Patient Information

COTTON, DARRYL  
MRN: 700464349 DOB: 05/29/1960 M/57  
12/12/17 ACCT: 102942964



SCRIPPS MERCY HOSPITAL, SAN DIEGO

R1 Keppra 250mg PO  
BID #14

R2  
R3

SCRIPT 58316

Order # 2322707-1

Circle No. of Drugs Prescribed

1 2 3

Prescription is void if number of drugs prescribed is not noted

No Refills allowed for Schedule II

Refill 0 - 1, 2, 3, 4 - PRN  
Refill 0 - 1, 2, 3, 4 - PRN  
Refill 0 - 1, 2, 3, 4 - PRN  
Refill 0 - 1, 2, 3, 4 - PRN

Date 12/12/17

COTTON, DARRYL

MRN: 700464349 DOB: 05/29/1960 M/57  
12/12/17 102942964

ENGLISH



SCRIPPS MERCY HOSPITAL, SAN DIEGO

VERIFICATION BOX: HOLD BETWEEN THUMB AND FOREFINGER OR BREATHE ON IT. COLOR WILL DISAPPEAR WHEN REAPPEAR



EXHIBIT 2

1 I, Joe Hurtado, declare:

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

4 2. Between late 2016 and early 2017, the following sequence of events took place: (i) Mr.  
5 Darryl Cotton informed me that he sold his property to Mr. Larry Geraci; (ii) Mr. Cotton told me  
6 that he expected Mr. Geraci would breach his agreement; (iii) Mr. Cotton asked that I help him  
7 locate a new buyer for his property; (iv) I brokered a deal between Mr. Cotton and Mr. Richard  
8 Martin for the sale of Mr. Cotton's property to Mr. Martin.  
9

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

13 4. Materially, on March 6, 2017, I attended a local cannabis event at which Gina Austin was a  
14 speaker. At that event, I introduced myself and, at Mr. Cotton's request, let her know that he would  
15 not be attending and speaking with her.  
16

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



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

6  
7 6. I note that after the TRO hearing, I was approximately 5 feet away from Mr. Demian and the  
8 attorney representing the City of San Diego. I expressly heard the attorney for the City of San Diego  
9 say something along the lines of: "the moving papers were great" and that Mr. Demian "should  
10 have won."

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

15  
16 8. Notably, the day after the Court declined Mr. Cotton's motion for reconsideration of his  
17 application for a TRO, thereby confirming that Mr. Cotton was unlikely to prevail in the Geraci  
18 Litigation, I informed him that I would be "cutting my losses" and would cease funding him  
19 personally and the Geraci Litigation. This took place on December 13, 2017. Thereafter, on the  
20 same day, Mr. Cotton came to where I was located uninvited and pleaded with me to continue my  
21 support. I refused. Mr. Cotton physically assaulted me. I threatened to call the authorities and Mr.  
22 Cotton just sat down and became, for lack of a better expression, neurotic (e.g., speaking to himself,  
23 talking to others, being emotional, etc.)

24  
25 9. Mr. Cotton was speaking and it appeared that he thought he was in the courtroom or at his  
26 property on Federal Boulevard. His speech was nonsensical. Understanding his situation, I did not  
27  
28

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

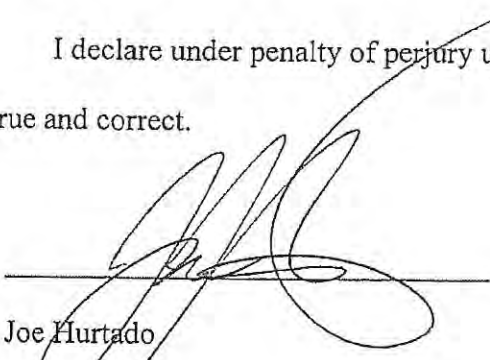
3 10. Dr. Candido came to the location where Mr. Cotton was located and examined Mr. Cotton.

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

6 12. I spoke with Dr. Candido and she agreed that so long as Mr. Cotton was not allowed to drive  
7 and he could stay at the residence with me under my supervision, it would not be necessary to call  
8 the authorities.  
9

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

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

21  
22   
23 Joe Hurtado

24 1/22/2018  
25  
26  
27  
28



EXHIBIT 3

1 I, Dr. Carolyn Candido, declare:

- 2 1. I am a licensed physician in the State of California.
- 3 2. On December 13, 2017, I was contacted by Mr. Joe Hurtado who requested I examine a
- 4 friend of his, Mr. Darryl Cotton, who was speaking incoherently. Mr. Hurtado stated he was
- 5 concerned that Mr. Cotton may require medical attention but that Mr. Cotton did not want to
- 6 go to the Emergency Room.
- 7 3. I traveled to Mr. Hurtado's residence and met with Mr. Hurtado and Mr. Cotton.
- 8 4. Mr. Cotton was in a room by himself and initially did not allow me to examine him. After
- 9 approximately thirty minutes, Mr. Hurtado spoke with Mr. Cotton who then allowed me to
- 10 perform a physical examination.
- 11 5. Mr. Cotton had an elevated pulse, was speaking incoherently and exhibited signs of anxiety,
- 12 panic and was expressing suicidal thoughts. His language vacillated from being clear to
- 13 incoherent. I am unclear as to what he was attempting to express, but from what I could
- 14 make out, he was in an emotional state due to matters related to some legal matter regarding
- 15 his property.
- 16 6. It is my diagnosis that he was suffering from Acute Stress Disorder and that at that moment
- 17 in time represented a danger to himself and others. Because of his express statements
- 18 regarding suicide and other expressions of violence as to unidentified third-parties, I
- 19 repeatedly requested that Mr. Cotton go to the Emergency Room, which he refused.
- 20 7. I communicated with Mr. Hurtado my diagnosis and expressed my concern for Mr. Cotton
- 21 regarding his statements, to the extent that they were clear, as they reflected an intent to
- 22 harm himself and others. It was my recommendation that Mr. Cotton not be by himself.
- 23 8. After speaking with Mr. Hurtado regarding Mr. Cotton, Mr. Hurtado promised to allow Mr.
- 24 Cotton to remain at that residence until such time as Mr. Cotton was calm.
- 25
- 26
- 27
- 28



1 9. Since that evening I have not met or spoken with Mr. Cotton.

2 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
3 true and correct.  
4

5 January 22, 2018  
6



7 Dr. Carolyn Candido  
8  
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EXHIBIT 4



## Exhibit A

Compilation of all email correspondence between Darryl  
Cotton and Larry Geraci

## Table of Contents

Format: Sender; Receiver; Date; Time

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



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

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

---

Thank you for your email...

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

Thank you.



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

---

Best Regards,

Larry E. Geraci, EA

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

Web: [Larrygeraci.com](http://Larrygeraci.com)  
**Bus: 858.576.1040**  
Fax: 858.630.3900

---

Circular 230 Disclaimer:

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

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

Darryl Cotton, President



[darryl@inda-gro.com](mailto:darryl@inda-gro.com)  
[www.inda-gro.com](http://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.









Federal Blvd. MMCC  
6176 Federal Blvd.  
San Diego, CA 92114

Owner  
Address  
City, CA Zip Code

[illegible]

**SITE PLAN -  
PROPOSED -  
Scheme B**

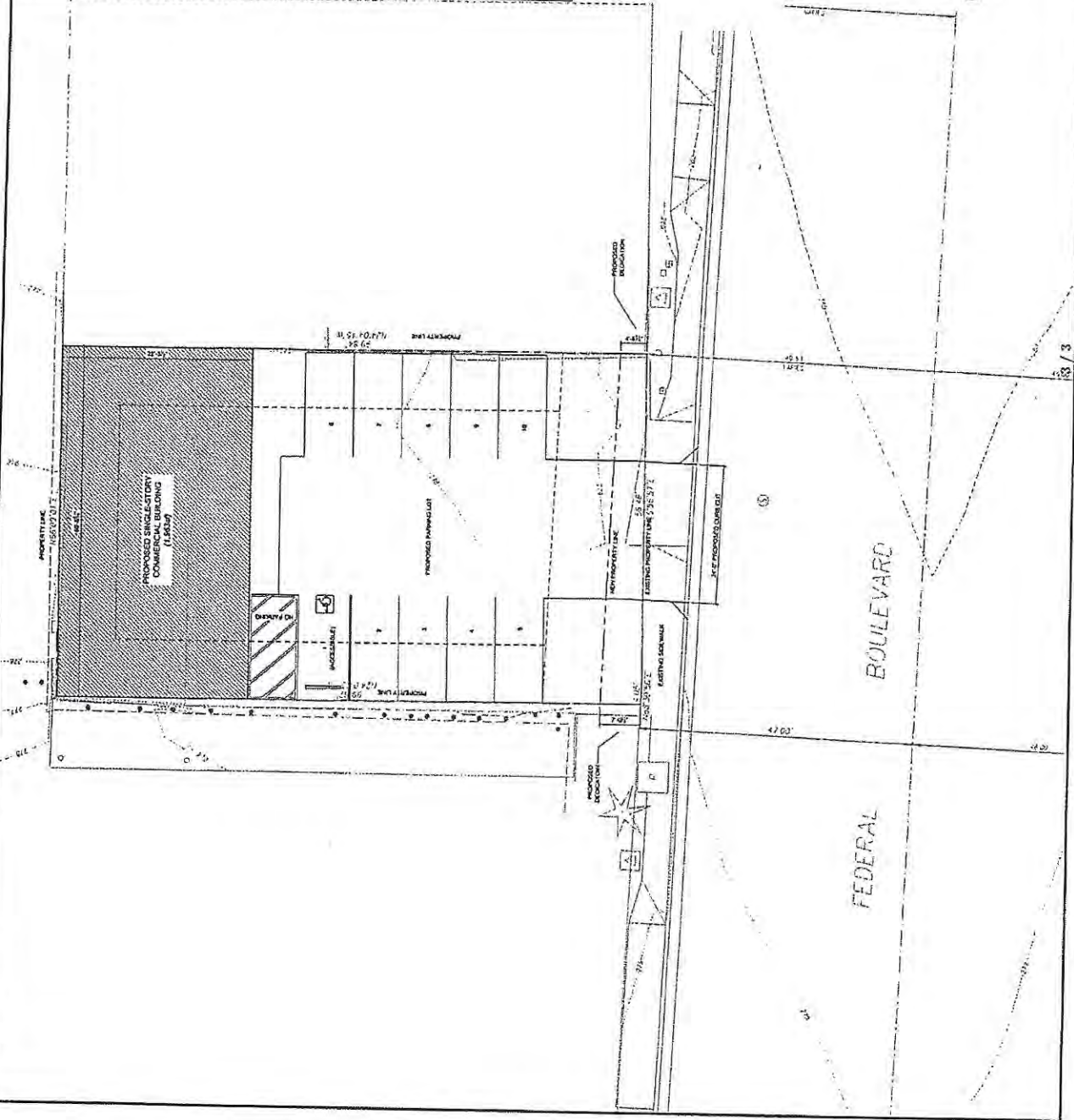
A102

## PROPERTY LINE

- OUTLINE OF PROPOSED STRUCTURES  
AREA OF EXISTING LANDSCAPE  
AREA OF EASEMENT  
AREA OF EXISTING HARDSCAPE  
SITE DRAINAGE PATTERN

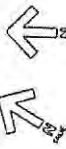
## SITE PLAN NOTES

- [illegible]



1 SITE PLAN - PROPOSED  
SCALE: 1"=10'

SCALE: 1/8" = 1'-0"





**Subject:** Agreement

**From:** Larry Geraci <Larry@tfcsd.net>

**To:** Darryl Cotton <darryl@inda-gro.com>

**Date:** Wednesday, November 2, 2016 2:11:51 PM GMT-08:00

---

*Best Regards,*

*Larry E. Geraci, EA*

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

*Web: [Larrygeraci.com](http://Larrygeraci.com)*

***Bus: 858.576.1040***

***Fax: 858.630.3900***

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11/02/2016

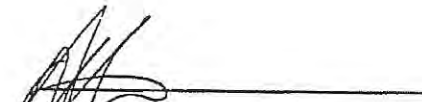
Agreement between Larry Geraci or assignee and Darryl Cotton:

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)

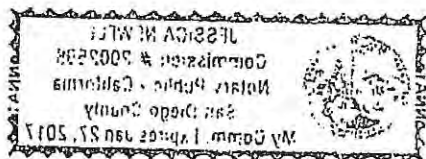
personally appeared Darryl Cotton and Larry Geraci  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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)







11/02/2016

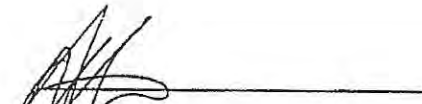
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Larry Geraci



Darryl Cotton

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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 Gerao  
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.

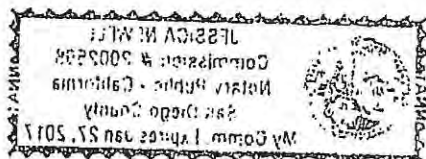
Signature

Jessica Newell

(Seal)







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

---

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <[darryl@inda-gro.com](mailto: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](mailto:darryl@inda-gro.com)  
[www.inda-gro.com](http://www.inda-gro.com)  
Ph: 877.452.2244  
Cell: 619.954.4447  
Skype: dc.dalbercia

6176 Federal Blvd.  
San Diego, CA. 92114  
USA

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On Wed, Nov 2, 2016 at 3:11 PM, Larry Geraci <[Larry@tfcSD.net](mailto:Larry@tfcSD.net)> wrote:

*Best Regards,*



Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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**Subject:** Federal Blvd need sig ASAP  
**From:** Larry Geraci <Larry@tfcisd.net>  
**To:** Darryl Cotton <darryl@inda-gro.com>  
**Date:** Monday, November 14, 2016 10:26:09 AM GMT-08:00

---

Hi Darryl,

Can you sign and email back to me asap?

*Best Regards,*

Larry E. Geraci, EA

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

*Web: Larrygeraci.com*

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

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

---

Signature

---

Date

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

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

---

Signature

---

Date



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

---

Hi Daryl,

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

*Best Regards,*

Larry E. Geraci, EA

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

*Web: Larrygeraci.com  
**Bus: 858.576.1040**  
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## 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 (1/2) 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



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

BUYER:

6176 FEDERAL BLVD TRUST

SELLER:

DARRYL COTTON.

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

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

Its: Trustee

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

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

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

Escrow Officer

**EXHIBIT "A"**

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





**EXHIBIT "B"**

**PROPERTY INFORMATION**





**EXHIBIT "C"**  
**SERVICE CONTRACTS**



**EXHIBIT "D"**

**THREATENED OR PENDING LAWSUITS**

**EXHIBIT "E"**

**MEMORANDUM OF AGREEMENT**





## AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

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

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

1. 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.

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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 (1/2) 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



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

**BUYER:**

**6176 FEDERAL BLVD TRUST**

**SELLER:**

**DARRYL COTTON.**

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

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

Its: Trustee

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

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

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

Escrow Officer

**EXHIBIT "A"**

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











EXHIBIT "C"

SERVICE CONTRACTS



**EXHIBIT "D"**

**THREATENED OR PENDING LAWSUITS**

**EXHIBIT "E"**

**MEMORANDUM OF AGREEMENT**





## AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

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

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

1. **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 (1/2) 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

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

BUYER:

6176 FEDERAL BLVD TRUST

SELLER:

DARRYL COTTON.

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

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

Its: Trustee

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

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

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

Escrow Officer



**EXHIBIT "A"**

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







EXHIBIT "C"  
SERVICE CONTRACTS



**EXHIBIT "D"**

**THREATENED OR PENDING LAWSUITS**

**EXHIBIT "E"**

**MEMORANDUM OF AGREEMENT**





**Subject:** Statement  
**From:** Larry Geraci <Larry@tfcsd.net>  
**To:** Darryl Cotton <darryl@inda-gro.com>  
**Date:** Thursday, March 2, 2017 8:51:11 AM GMT-08:00

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*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.

## **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**

**SELLER:**

**DARRYL COTTON:**

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

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

Its: Trustee

\_\_\_\_\_

## **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:**

\_\_\_\_\_

**Subject:** Re: Statement  
**From:** Darryl Cotton <indagroddarryl@gmail.com>  
**To:** Larry Geraci <Larry@tfcscd.net>  
**Date:** Friday, March 3, 2017 8:22:09 AM GMT-08:00

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Larry,

I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position as per my Inda-Gro GERL Service Agreement (see attached) in the new store. In fact para 3.11 looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?

On Thu, Mar 2, 2017 at 8:51 AM, Larry Geraci <Larry@tfcscd.net> wrote:

*Best Regards,*

*Larry E. Geraci, EA*

*Tax & Financial Center, Inc*

*5402 Ruffin Rd, Ste 200*

*San Diego, Ca 92123*

*Web: Larrygeraci.com*

***Bus: 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.



## 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 <sup>3/4</sup> Local: 619.266.4004  
www.inda-gro.com



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

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

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

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

Sign: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Darryl Cotton, President

Sign: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Larry Geraci





## 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

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**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

**Subject:** Contract Review  
**From:** Larry Geraci <Larry@tfcSD.net>  
**To:** Darryl Cotton <darryl@inda-gro.com>  
**Date:** Tuesday, March 7, 2017 12:05:43 PM GMT-08:00

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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](http://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.



## 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.

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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.

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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.:  
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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,



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.

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

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

**BUYER: SELLER:**

**6176 FEDERAL BLVD. TRUST**

**DARRYL COTTON:**

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

\_\_\_\_\_

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

Its: Trustee

## 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,

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

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

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

2.16. 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.

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

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

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

**BUYER: SELLER:**

**6176 FEDERAL BLVD. TRUST**

**DARRYL COTTON:**

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

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

Its: Trustee



**Subject:** Re: Contract Review  
**From:** Darryl Cotton <indagrodarryl@gmail.com>  
**To:** Larry Geraci <Larry@tfcscd.net>  
**Date:** Thursday, March 16, 2017 8:23:52 PM GMT-07:00

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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:

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- 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.
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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."

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- 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.

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

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <[Larry@tfcisd.net](mailto:Larry@tfcisd.net)> wrote:

Hi Daryl,

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

*Best Regards,*

*Larry E. Geraci, EA*

*Tax & Financial Center, Inc*

*5402 Ruffin Rd, Ste 200*

*San Diego, Ca 92123*

*Web: [Larrygeraci.com](http://Larrygeraci.com)*

***Bus: 858.576.1040***

***Fax: 858.630.3900***

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**Subject:** Re: Contract Review  
**From:** Darryl Cotton <indagrodarryl@gmail.com>  
**To:** Larry Geraci <Larry@tfcscd.net>  
**Date:** Friday, March 17, 2017 2:15:50 PM GMT-07:00

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

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

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

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

-Darryl

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*Tax & Financial Center, Inc*

*5402 Ruffin Rd, Ste 200*

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**Subject:** RE: Contract Review  
**From:** Larry Geraci <Larry@tfcfsd.net>  
**To:** Darryl Cotton <indagrodarryl@gmail.com>  
**Date:** Saturday, March 18, 2017 1:43:23 PM GMT-07:00

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Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

*Best Regards,*

*Larry E. Geraci, EA*

*Tax & Financial Center, Inc  
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**From:** Darryl Cotton [mailto:indagrodarryl@gmail.com]  
**Sent:** Friday, March 17, 2017 2:16 PM  
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**Subject:** Re: Contract Review  
**From:** Darryl Cotton <indagrodarryl@gmail.com>  
**To:** Larry Geraci <Larry@tfcfsd.net>  
**Date:** Sunday, March 19, 2017 9:02:18 AM GMT-07:00

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**Sent:** Friday, March 17, 2017 2:16 PM

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**Subject:** Re: Contract Review

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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.

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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.

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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



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**From:** Larry Geraci <Larry@tfcisd.net>  
**To:** Darryl Cotton <indagrodarryl@gmail.com>  
**Date:** Sunday, March 19, 2017 3:11:22 PM GMT-07:00

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Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

**As to lying about the status, read the comment below from the city on Wednesday 3/15/2017.**  
We are addressing this currently with the city. I have been forthright with you this entire process.

**To:** 'Abhay Schweitzer' <abhay@techne-us.com>  
**Subject:** PTS 520606 - Federal Boulevard MMCC  
**Importance:** High

Good Afternoon,  
I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application. Please advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.  
Please notify me at your earliest convenience of your preference.  
Regards,

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**From:** Darryl Cotton [mailto:indagrodarryl@gmail.com]  
**Sent:** Sunday, March 19, 2017 9:02 AM



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**Subject:** Re: Contract Review

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**From:** Darryl Cotton <indagroddarryl@gmail.com>  
**To:** Larry Geraci <Larry@tfcscd.net>  
**Date:** Sunday, March 19, 2017 6:47:43 PM GMT-07:00

---

Larry,

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

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

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Please advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,

Best Regards,

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*San Diego, Ca 92123*

*Web: [Larrygeraci.com](http://Larrygeraci.com)*

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**Sent:** Friday, March 17, 2017 2:16 PM  
**To:** Larry Geraci <[Larry@tfcisd.net](mailto:Larry@tfcisd.net)>  
**Subject:** Re: Contract Review

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

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost



reasons.

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

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

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

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <[Larry@tfcisd.net](mailto:Larry@tfcisd.net)> wrote:

Hi Daryl,

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

*Best Regards,*

*Larry E. Geraci, EA*



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**Subject:** Re: Contract Review  
**From:** Darryl Cotton <indagrodarryl@gmail.com>  
**To:** Larry Geraci <Larry@tfcSD.net>  
**Date:** Tuesday, March 21, 2017 3:18:36 PM GMT-07:00

---

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

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

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

Darryl Cotton

On Sun, Mar 19, 2017 at 6:47 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:  
Larry,

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

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

On Sun, Mar 19, 2017 at 3:11 PM, Larry Geraci <Larry@tfcSD.net> wrote:

Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

**As to lying about the status, read the comment below from the city on Wednesday 3/15/2017.** We are addressing this currently with the city. I have been forthright with you this entire



process.

**To:** 'Abhay Schweitzer' <abhay@techne-us.com>  
**Subject:** PTS 520606 - Federal Boulevard MMCC  
**Importance:** High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

Please advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,

*Best Regards,*

*Larry E. Geraci, EA*

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**From:** Darryl Cotton [mailto:[indagrodarryl@gmail.com](mailto:indagrodarryl@gmail.com)]  
**Sent:** Sunday, March 19, 2017 9:02 AM

**To:** Larry Geraci <[Larry@tfcisd.net](mailto:Larry@tfcisd.net)>  
**Subject:** Re: Contract Review

Larry,

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

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

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11

EXHIBIT 5





CALIFORNIA  
ASSOCIATION  
OF REALTORS

# COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(NON-RESIDENTIAL)  
(C.A.R. Form CPA, Revised 12/15)

Date Prepared: 03/21/2017

## 1. OFFER:

- A. THIS IS AN OFFER FROM Richard John Martin II ("Buyer").  
☒ Individual(s), ☐ A Corporation, ☐ A Partnership, ☐ An LLC, ☐ An LLP, or ☐ Other
- B. THE REAL PROPERTY to be acquired is 6776 Federal Blvd, situated in  
San Diego (City), San Diego (County), California, 92114-1437 (Zip Code), Assessor's Parcel No. 543-370-03-0 (Property)
- C. THE PURCHASE PRICE offered is Two Million Dollars \$ 2,000,000.00
- D. CLOSE OF ESCROW shall occur on ☒ see Addendum 1 (date) (or        Days After Acceptance)
- E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

## 2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a ☒ "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD)
- B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:  
Listing Agent: N/A (Print Firm Name) is the agent of (check one)  
☐ the Seller exclusively, or ☐ both the Buyer and Seller,  
Selling Agent: N/A (Print Firm Name) is not the same  
as the Listing Agent) is the agent of (check one) ☐ the Buyer exclusively, or ☐ the Seller exclusively, or ☐ both the Buyer and Seller
- C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS)

## 3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$         
(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, ☐ cashier's check, ☐ personal check, ☐ other        within 3 business days after Acceptance (or       ).
- OR (2) ☐ Buyer Deposit with Agent: Buyer has given the deposit by personal check (or       ) to the agent submitting the offer (or to       ), made payable to       . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or       ). Deposit checks given to agent shall be an original signed check and not a copy.
- (Note: Initial and increased deposit checks received by agent shall be recorded in Broker's trust fund log.)
- B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$        within        Days After Acceptance (or       ). If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
- C. ☐ ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or ☐ Buyer shall, within 3 (or       ) Days After Acceptance, Deliver to Seller such verification.

## D. LOAN(S):

- (1) FIRST LOAN: in the amount of \$ 1,800,000.00  
This loan will be conventional financing or ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other       . This loan shall be at a fixed rate not to exceed        % or ☐ an adjustable rate loan with initial rate not to exceed        %. Regardless of the type of loan, Buyer shall pay points not to exceed        % of the loan amount.
- (2) ☐ SECOND LOAN in the amount of \$         
This loan will be conventional financing or ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other       . This loan shall be at a fixed rate not to exceed        % or ☐ an adjustable rate loan with initial rate not to exceed        %. Regardless of the type of loan, Buyer shall pay points not to exceed        % of the loan amount.

## E. ADDITIONAL FINANCING TERMS: see attached Addendum 1

F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ 200,000.00 to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

G. PURCHASE PRICE (TOTAL): \$ 2,000,000.00

H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3.1(1)) shall, within 3 (or       ) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (☐ Verification attached.)

Buyer's Initials (X) RM  
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CPA REVISED 12/15 (PAGE 1 OF 11)

Seller's Initials (X)       





Property Address: 6176 Federal Blvd. San Diego, CA 92114-1401

Date: March 21, 2017

- I. **APPRAISAL CONTINGENCY AND REMOVAL.** This Agreement is (or ☒ is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or     ) Days After Acceptance.

J. **LOAN TERMS:**

(1) **LOAN APPLICATIONS:** Within 3 (or     ) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. ☒ Letter attached.

(2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) **LOAN CONTINGENCY REMOVAL:**

Within 21 (or     ) Days After Acceptance, Buyer shall, as specified in paragraph 1A, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(4) ☒ **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

(5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

- K. **BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

L. **SALE OF BUYER'S PROPERTY:**

A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.

OR B. ☐ This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

M. **ADDENDA AND ADVISORIES:**

A. **ADDENDA:**

<input checked="" type="checkbox"/> Back Up Offer Addendum (C.A.R. Form BUO)	<input checked="" type="checkbox"/> Addendum # <u>1</u> (C.A.R. Form ADM)
<input type="checkbox"/> Seismic Wall and Property Monument Addendum (C.A.R. Form SWPM)	<input type="checkbox"/> Court Confirmation Addendum (C.A.R. Form CCA)
<input type="checkbox"/> Short Sale Addendum (C.A.R. Form SSA)	<input type="checkbox"/> Other <u>    </u>

B. **BUYER AND SELLER ADVISORIES:**

<input checked="" type="checkbox"/> Buyer's Inspection Advisory (C.A.R. Form BIA)
<input type="checkbox"/> Probate Advisory (C.A.R. Form PA)
<input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
<input type="checkbox"/> Trust Advisory (C.A.R. Form TA)
<input type="checkbox"/> REO Advisory (C.A.R. Form REO)
<input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSI/A)
<input type="checkbox"/> Other <u>    </u>

N. **OTHER TERMS:** see attached Addendum 1, is incorporated as part of contract

O. **ALLOCATION OF COSTS**

A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

(1) ☐ Buyer ☐ Seller shall pay for a natural hazard zone disclosure report, including tax ☐ environmental ☐ Other      prepared by     

(2) ☐ Buyer ☐ Seller shall pay for the following Report      prepared by     

(3) ☐ Buyer ☐ Seller shall pay for the following Report      prepared by     

B. **GOVERNMENT REQUIREMENTS AND RETROFIT:**

(1) ☐ Buyer ☐ Seller shall pay for smoke alarm and carbon monoxide device installation and water heater venting, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.

Buyer's Initials (X     ) (      )

Seller's Initials (X     ) (      )

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COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 2 OF 11)

Produced with the assistance of the California Association of Realtors, 15301 E. 15th Ave., Suite 100, Denver, CO 80202

15th Edition





Property Address: 5176 Federal Blvd, San Diego, CA 92114-1401

Date: March 21, 2017

- (2) (i) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.  
(ii) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government report standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.  
(iii) Buyer shall be provided, within the time specified in paragraph 18A, a copy of any required government conducted at point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of the sale of the Property.

**C. ESCROW AND TITLE:**

- (1) (a) ☐ Buyer ☐ Seller shall pay escrow fee \_\_\_\_\_  
(b) Escrow Holder shall be \_\_\_\_\_  
(c) The Parties shall, within 5 (or \_\_\_\_\_) Days After receipt, sign and return Escrow Holder's general provisions.  
(2) (a) ☐ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 17E \_\_\_\_\_  
(b) Owner's title policy to be issued by \_\_\_\_\_  
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

**D. OTHER COSTS:**

- (1) ☐ Buyer ☐ Seller shall pay County transfer tax or fee \_\_\_\_\_  
(2) ☐ Buyer ☐ Seller shall pay City transfer tax or fee \_\_\_\_\_  
(3) ☐ Buyer ☐ Seller shall pay Owners' Association ('OA') transfer fee \_\_\_\_\_  
(4) Seller shall pay OA fees for preparing all documents required to be delivered by Civil Code §4525.  
(5) ☐ Buyer ☐ Seller shall pay OA fees for preparing all documents other than those required by Civil Code §4525.  
(6) Buyer to pay for any HOA certification fee.  
(7) ☐ Buyer ☐ Seller shall pay for any private transfer fee \_\_\_\_\_  
(8) ☐ Buyer ☐ Seller shall pay for \_\_\_\_\_  
(9) ☐ Buyer ☐ Seller shall pay for \_\_\_\_\_

**8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**

**A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8 B, C or D.

**B. ITEMS INCLUDED IN SALE:**

- (1) All EXISTING fixtures and fittings that are attached to the Property;  
(2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, replace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air conditioners/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms.  
(3) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 18A.  
(4) Seller represents that all items included in the purchase price are, unless otherwise specified or identified pursuant to 8B(7) owned by Seller. Within the time specified in paragraph 18A, Seller shall give Buyer a list of fixtures not owned by Seller.  
(5) Seller shall deliver title to the personal property by Bill of Sale, free and clear of all liens and encumbrances, and without seller warranty of condition regardless of value.  
(6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC Financing Statement to be filed with the Secretary of State covering the personal property included in the purchase replacement thereof, and insurance proceeds.  
(7) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 18A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased or not owned by Seller or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 18B and C.

**C. ITEMS EXCLUDED FROM SALE:** Unless otherwise specified, the following items are excluded from sale \_\_\_\_\_

**D. OTHER ITEMS:**

- (1) Existing integrated phone and automation systems, including necessary components such as internet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers), and applicable software, permissions, passwords, codes and access information, are ☐ are NOT included in the sale.

**9. CLOSING AND POSSESSION:**

- A. Seller-occupied or vacant property:** Possession shall be delivered to Buyer (i) ☐ at 6 PM or ☐ AM ☐ PM, on the date of Close Of Escrow; (ii) ☐ no later than \_\_\_\_\_ calendar days After Close Of Escrow; or (iii) ☐ at \_\_\_\_\_ AM ☐ PM on \_\_\_\_\_.  
**B. Seller Remaining in Possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as C.A.R. Form CL, and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property, and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.  
**C. Tenant Occupied Units:** Possession and occupancy, subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.  
**D. At Close Of Escrow:** (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale, and (ii) Seller shall deliver to Buyer available copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.

Buyer's Initials (x MA) ( \_\_\_\_\_ )  
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Seller's Initials (x \_\_\_\_\_ )

**COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 3 OF 11)**

Produced with performance by CA, Reg. 15672.2 Buyer Must Read and Sign Before Closing

1/15/2016





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Date: March 21, 2017

- E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and intranet and Internet-connected devices included in the purchase price and garage door operators. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.
10. **SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer at Close Of Escrow. Seller shall notify each tenant, in compliance with the Civil Code.
11. **SELLER DISCLOSURES:**

- A. **NATURAL AND ENVIRONMENTAL DISCLOSURES:** Seller shall, within the time specified in paragraph 18, if required by Law: (i) Deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide an NHD, disclose if the Property is located in a Special Flood Hazard Area, Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone, Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

- B. **ADDITIONAL DISCLOSURES:** Within the time specified in paragraph 18, Seller shall Deliver to Buyer, in writing, the following disclosures, documentation and information:

- (1) **RENTAL SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; and (ii) a rental statement including names of tenants, rental rates, period of rental, date of last rent increase, security deposits, rental concessions, rebates, or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any concession, rebate, or other benefit, except as set forth in these documents.

- (2) **INCOME AND EXPENSE STATEMENTS:** The books and records, including a statement of income and expense for the 12 months preceding Acceptance, Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of federal and state income tax returns.

- (3) **TENANT ESTOPPEL CERTIFICATES:** (if checked) Tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

- (4) **SURVEYS, PLANS AND ENGINEERING DOCUMENTS:** Copies of surveys, plans, specifications and engineering documents, if any, in Seller's possession or control.

- (5) **PERMITS:** If in Seller's possession, Copies of all permits and approvals concerning the Property, obtained from any governmental entity, including, but not limited to, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.

- (6) **STRUCTURAL MODIFICATIONS:** Any known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.

- (7) **GOVERNMENTAL COMPLIANCE:** Any improvements, additions, alterations or repairs made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals.

- (8) **VIOLATION NOTICES:** Any notice of violations of any Law filed or issued against the Property and actually known to Seller.

- (9) **MISCELLANEOUS ITEMS:** Any of the following, if actually known to Seller: (i) any current pending lawsuit(s), investigation(s), inquiry(ies), action(s) or other proceeding(s) affecting the Property or the right to use and occupy it; (ii) any unsatisfied mechanic's or materialman's lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy.

- C. **WITHHOLDING TAXES:** Within the time specified in paragraph 18A, to avoid required withholding Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or OS).

- D. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

- E. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**

- (1) **SELLER HAS:** 7 (or     ) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision.

- (2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or     ) Days After Acceptance to request from the OA (C.A.R. Form NDA1) (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes (or regular and special meetings); and (v) the names and contact information of all OAs governing the Property (collectively, "CI Disclosures"). Seller shall summarize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 18B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to OA or management company to pay for any of the above.

Buyer's Initials (X     ) (      )

Seller's Initials (X     ) (      )

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COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 4 OF 11)

Produced with the assistance of the California Association of Realtors, Inc. (C.A.R.)



6176 Federal



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Date: March 21, 2017

12. ☐ ENVIRONMENTAL SURVEY (if checked): Within \_\_\_\_\_ Days After Acceptance, Buyer shall be provided a phase one environmental survey report paid for and obtained by \_\_\_\_\_ [Buyer / Seller]. Buyer shall then, as specified in paragraph 16, remove this contingency or cancel this Agreement.
13. SUBSEQUENT DISCLOSURES: In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly deliver a subsequent or amended disclosure or notice in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.
14. CHANGES DURING ESCROW:
- A. Prior to Close Of Escrow, Seller may only engage in the following acts ("Proposed Changes") subject to Buyer's rights in paragraph 14B: (i) rent or lease any vacant unit or other part of the premises, (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
  - B. (1) 7 (or \_\_\_\_\_) Days prior to any Proposed Changes, Seller shall deliver written notice to Buyer of any Proposed Changes.
  - (2) Within 5 (or \_\_\_\_\_) Days After receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
15. CONDITION OF PROPERTY: Unless otherwise agreed in writing, (i) the Property is sold in "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights, (ii) the Property including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
- A. Seller shall, within the time specified in paragraph 18A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
  - B. Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 18B, based upon information discovered in those investigations: (i) cancel this Agreement, or (ii) request that Seller make Repairs or take other action.
  - C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.
16. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:
- A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 18B. Within the time specified in paragraph 18B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations") including but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards, (ii) inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures, may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent, shall NOT include roof coverings and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas and shall include a map ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2), (iii) review the registered sex offender database, (iv) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance, (v) review and seek approval of leases that may need to be assumed by Buyer, and (vi) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form 51A). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing required to prepare a Pest Control Report or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
  - B. Seller shall make the Property available for all Buyer Investigations. Buyer shall: (i) as specified in paragraph 18B, complete Buyer Investigations and either remove this contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete copies of all such investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
  - C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.
  - D. Buyer indemnify and seller protection for entry upon property: Buyer shall: (i) keep the Property free and clear of liens, (ii) repair any damage arising from Buyer Investigations, and (iii) indemnify and hold Seller harmless from a resulting liability claim, damages, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability workers' compensation and other applicable insurance, coloring and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.
17. TITLE AND VESTING:
- A. Within the time specified in paragraph 18, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 18B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (FECs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
  - B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations, and (ii) those matters which Seller has agreed to remove in writing.
  - C. Within the time specified in paragraph 18A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

Buyer's Initials (X) \_\_\_\_\_  
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Seller's Initials (X) \_\_\_\_\_



COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 5 OF 11)

Prepared and published by California REALTORS® Association, 12345 California Blvd., Suite 100, San Diego, CA 92161

11/16/2016



Property Address: 6176 Federal Blvd, San Diego, CA 92114-1401

Date March 21, 2017

19. **REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skilful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall (i) obtain invoices and paid receipts for Repairs performed by others (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
20. **FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or \_\_\_) Days Prior to Close Of Escrow. NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 15, (ii) Repairs have been completed as agreed, and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
21. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, OA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien but not yet due. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow by Buyer; and (ii) for periods prior to Close Of Escrow by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
22. **BROKERS:**
- A. **COMPENSATION:** Seller or Buyer or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. **BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify, defend, and hold the other, the Brokers specified herein and their agents harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representations in this paragraph.
- C. **SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what once Buyer or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, life and other desired assistance from appropriate professionals.
23. **REPRESENTATIVE CAPACITY:** If one or more Parties is signing the Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 40 or 41 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to applicable portion of the trust or Certification Of Trust (Probate Code 16130.5), letters testamentary, court order, power of attorney, corporate resolution or formation documents of the business entity).
24. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow, paragraphs 1, 3, 4B, 5A, 6, 7, 10, 11D, 17, 18G, 21, 22A, 23, 24, 30, 38, 39, 41, 42 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 22A, or paragraph D of the section titled Real Estate Brokers on page 11 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or \_\_\_) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 11, or elsewhere in this Agreement.

Buyer's Initials (X) \_\_\_\_\_  
CPA REVISED 12/15/14 PAGE 7 OF 11

Seller's Initials (X) \_\_\_\_\_

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 7 OF 11)

Produced with Self Serve by Redox 16073 Federal Blvd, Suite 100, San Diego, CA 92114

6176 Federal





Property Address: 6176 Federal Blvd. San Diego, CA 92114-1401

Date March 21, 2017

**C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:**

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code 52935; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.
- 27. SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 28. MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM:** If Broker is a participant of a Multiple Listing Service (MLS) or Property Data System (PDS), Broker is authorized to report to the MLS or PDS a pending sale and, upon Close Of Escrow, the terms of the transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.
- 29. ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 29A.
- 30. ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AQAA).
- 31. SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
- 32. ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property in applicable situations for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.
- 33. AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against and individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and non-monetary remedies may be incurred if the Property is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
- 34. COPIES:** Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
- 35. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination laws.
- 36. GOVERNING LAW:** This Agreement shall be governed by the Laws of the State of California.
- 37. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initiated by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
- 38. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.
- 39. DEFINITIONS:** As used in this Agreement:
- A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.

Buyer's Initials (X) [Signature]  
CPA REVISED 12/15 (PAGE 9 OF 11)

Seller's Initials (X) [Signature]

**COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 9 OF 11)**

Produced with the assistance of the California Association of Realtors, 1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017

11-1-1-1-1-1

Date March 21, 2017

D. "Close Of Escrow" or "COE" means the date the grant deed, or other evidence of transfer of title, is recorded.

E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.

F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.

H. "Days Prior" means the specified number of calendar days prior to the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.

H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.

I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 11, regardless of the method used (i.e., messenger, mail, email, fax, other)

J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California  
Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of  
K this Agreement without the knowledge and consent of the other Party.

K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.

1. "Repairs" means any repairs (including past repairs), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.

**AUTHORITY:** Any person or persons cannot this Agreement, nor any of its terms, without the authority of the Board of Directors.

40. **AUTHORITY:** Any person or persons signing this Agreement represent(s) that such person has his power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to order into and perform this Agreement, entering into this Agreement and the completion of the obligations pursuant to this contract, does not violate any Articles of Incorporation, Articles of Organization, By Laws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.

41. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is signed by Seller and a Copy of the Signed offer is personally received by Buyer or by \_\_\_\_\_ see Addendum 1 who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by \_\_\_\_\_ AM PM on \_\_\_\_\_ (date)).

\* One or more Buyers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 3-21-17 BUYER [Signature]

(Print name) Richard John Martin II

Only BUYER

(Print name)

☐ Additional Signature Addendum attached (C.A.R. Form ASA)

42. **ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Broker to Deliver a Signed Copy to Buyer.

☐ (If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED.

One or more Sellers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (CA.R. Form RCS0-3) for additional terms.

Date 3-21-17 SELLER

(Print name) Darryl Cotton

Date	SELLER
11/1/54	W. J. ...
11/2/54	...
11/3/54	...
11/4/54	...
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11/28/54	...
11/29/54	...
11/30/54	...

(Print name)

☐ Additional Signature Addendum attached (C.A.R. Form ASA)

\_\_\_\_\_/\_\_\_\_\_) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was  
(Initials) personally received by Buyer or Buyer's authorized agent on (date) \_\_\_\_\_ at \_\_\_\_\_  
A.B. PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by  
Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this  
confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence  
the date that Confirmation of Acceptance has occurred.



Property Address: 6176 Federal Blvd, San Diego, CA 92114-1401

Date: March 21, 2017

**REAL ESTATE BROKERS:**

A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

B. Agency relationships are confirmed as stated in paragraph 2.

C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.

D. **COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form C8C). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) *N/A*

By \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker (Listing Firm) *N/A*

By \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_  
By \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**ESCROW HOLDER ACKNOWLEDGMENT:**

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked ☐ a deposit in the amount of \$ \_\_\_\_\_ counter offer number \_\_\_\_\_ Seller's Statement of Information and \_\_\_\_\_ and agree to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is \_\_\_\_\_

Escrow Holder  
By \_\_\_\_\_ Escrow # \_\_\_\_\_  
Address \_\_\_\_\_ Date \_\_\_\_\_  
Phone/Fax/E-mail \_\_\_\_\_

Escrow Holder has the following license number # \_\_\_\_\_

Department of Business Oversight, ☐ Department of Insurance, ☐ Bureau of Real Estate

**PRESENTATION OF OFFER:** ( \_\_\_\_\_ ) Listing Broker presented this offer to Seller on \_\_\_\_\_ (date)  
Broker or Designee Initials

**REJECTION OF OFFER:** ( ☒ ) No counter offer is being made. This offer was rejected by Seller on \_\_\_\_\_ (date)  
Seller's Initials

Buyer's Initials ( ☒ ) ( \_\_\_\_\_ )

Seller's Initials ( ☒ ) ( \_\_\_\_\_ )

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Reviewed by  
Broker or Designee \_\_\_\_\_



CPA REVISED 12/15 (PAGE 11 OF 11)

**COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 11 OF 11)**

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1/1/16/16/16



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## ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other

dated March 21, 2017

on property known as

San Diego, CA 92114-1401

6175 Federal Blvd

in which

Richard John Martin II

and

Darryl Cotton

is referred to as ("Buyer/Tenant")

is referred to as ("Seller/Landlord")

### Memorandum of Understanding

This Memorandum of Understanding ("MOU") is fully incorporated into this purchase agreement.

Seller shall receive a 20% equity stake in the business / MMCC upon approval and completion.

Seller shall receive on a monthly basis, 20% of the profits of the business / MMCC or \$10,000, whichever is greater

The \$100,000 earnest money deposit is non-refundable and shall be Seller's to keep even if the CUP application is denied.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date March 21, 2017

Date March 21, 2017

Buyer/Tenant X

Richard John Martin II

Seller/Landlord X

Darryl Cotton

Buyer/Tenant

Seller/Landlord

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ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)





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# ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 2

The following terms and conditions are hereby incorporated in and made a part of the: ☒ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other

dated March 21, 2017 on property known as San Diego, CA 92114-1401 6176 Federal Blvd  
in which Richard John Martin II is referred to as "Buyer/Tenant"  
and Darryl Cotton is referred to as "Seller/Landlord"

## Memorandum of Understanding and Agreement

- 1) This Memorandum of Understanding and Agreement ("MOUA") amends the agreement reached by Buyer and Seller on March 21, 2017.
- 2) Notwithstanding any language in this purchase agreement to the contrary, the provisions within this MOUA shall be given effect and supersede any conflicting or ambiguous language within this purchase agreement.
- 3) Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the associated CUP application pending before the City of San Diego for \$500,000.
- 4) Buyer shall immediately provide seller with a \$50,000 non-refundable deposit.
- 5) The closing of this sale, including the payment of the balance of the purchase price and all the requirements stated herein, shall be completed upon the favorable resolution of the Larry Geraci lawsuit against Seller for the property.
- 6) In addition, should a CUP application be approved at the property, Buyer shall pay Seller a one-time payment of \$1,500,000. Seller's previous agreement for an equity stake in the business is voided and Seller has no interest in the property or the CUP.
- 7) CONFIDENTIALITY CLAUSE: SELLER WILL NOT DISCLOSE BUYER'S IDENTITY OR THIS AGREEMENT IN ANY FORM, DIRECTLY OR INDIRECTLY, UNTIL HE HAS RESOLVED THE LEGAL ACTION WITH GERACI. FOR THE AVOIDANCE OF DOUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE OR MENTION BUYER IN ANY FORM TO ANY THIRD PARTIES, IN ANY LITIGATION PROCEEDINGS OR IN ANY MATTERS REGARDING ALLEGATIONS OF CRIMINAL OR UNLAWFUL ACTIONS. SHOULD SELLER BREACH THIS PROVISION, SELLER HEREBY EXPRESSLY AGREES TO PAY TO BUYER \$200,000 FOR BREACH OF THIS PROVISION.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date April 15, 2017

Date April 15, 2017

Buyer/Tenant X Richard John Martin II

Seller/Landlord X Darryl Cotton

Buyer/Tenant

Seller/Landlord

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ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)



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## ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 3

The following terms and conditions are hereby incorporated in and made a part of the ☐ Purchase Agreement ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind) ☐ Other \_\_\_\_\_ dated March 21, 2017 on property known as \_\_\_\_\_

in which San Diego, CA 92114-1401 6176 Federal Blvd  
and Richard John Martin II is referred to as "Buyer/Tenant"  
Darryl Cotton is referred to as "Seller/Landlord".

This addendum is fully incorporated into this purchase agreement and amends the agreement reached between the parties on March 21, 2017, as amended by addendum 2 on April 15th, 2017.

Buyer hereby agrees to permit Seller to disclose this agreement in his response to Graci's lawsuit.

For the avoidance of doubt, Seller will not have to pay the \$200,000 fine for breach of the Confidentiality provision previously agreed to.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document

Date May 12, 2017

Date May 12, 2017

Buyer/Tenant X Richard John Martin II

Seller/Landlord X Darryl Cotton

Buyer/Tenant \_\_\_\_\_

Seller/Landlord \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)





Pre-Approval Letter

Friday, April 14, 2017

TO: Whom it may concern  
RE: Richard John (R.J.) Martin II

We are pleased to inform you that the above referenced loan application has been *pre-approved* with the following terms and conditions:

*Purchase Price: \$2,500,000*  
*Loan Program: Jumbo 30 YEAR FIX*  
*Loan amount: \$2,000,000*

The following conditions must be satisfied for final loan approval:

- 1) *Appraiser's certification of value along with a final inspection.*
- 2) *Acceptable Preliminary Title.*
- 3) *Following standard investor requirements: Evidence of Hazard Insurance, Flood Certification*
- 4) *Copy of Fully Executed Purchase Contract and Escrow Instructions*

This approval is based on review of the borrower's credit report in conjunction with documentation provided by the borrower regarding employment, income, assets as applicable to the above loan. These items are sufficient to obtain final loan approval provided there are no changes in the borrower's financial situation as required by the loan program.

Please keep in mind the following:

- Upgrades and modifications that increase the purchase price beyond what is indicated above may invalidate this approval and result in disqualification or re-qualification on an alternative loan program offering.
- This approval does not include any contingencies unless specifically noted above. If the loan approval is contingent on sale of another property but that sale does not occur prior to closing on this property, re-qualification on an alternative loan program may be required to complete the purchase.
- At times market conditions require that loan program guidelines and parameters change, which may affect this approval unless your loan has been locked and will close within that lock period. If this occurs, we will review the borrower's file and notify you of any changes that apply.

Sincerely,

*Alexis Roper*

Alexis Roper  
Sr. Mortgage Loan Officer  
619-436-8873  
[aroper@amerifirst.us](mailto:aroper@amerifirst.us)  
NMLS #583371



AmeriFirst Financial, Inc., 1550 E. McKellips Road, Suite 117, Mesa, AZ 85203 (NMLS # 145368). 1-877-276-1974. Copyright 2014. All Rights Reserved. This is not an offer to enter into an agreement. Not all customers will qualify. Information, rates, and programs are subject to change without prior notice. All products are subject to credit and property approval. Not all products are available in all states or for all loan amounts. Other restrictions and limitations apply. License Information: CA: Licensed by The Department of Business Oversight under the California Residential Mortgage Lending Act

EXHIBIT 6



1/22/2018

Gmail - Executed Services Agreement for Representation of Darryl Cotton



Darryl Cotton <indagrodarryl@gmail.com>

**Executed Services Agreement for Representation of Darryl Cotton**

Darryl Cotton <indagrodarryl@gmail.com>  
To: "Adam C. Wilt" <awilt@fbilaw.com>  
Cc: Joe Hurtado <j.hurtado1@gmail.com>

Thu, Jun 15, 2017 at 12:16 PM

Adam,

Please find attached the executed engagement letter. Per our agreement, notwithstanding the language in the engagement letter, I will be financing this lawsuit with a total monthly payment of \$10,000 a month with the retainer to be paid within 24 hours.

As per our phone discussion earlier today please do not respond to my sisters request for information on your representation of me or the status of my 6176 Federal Blvd property. My father holds the title on the property and she is trying to make sure I am not representing myself in the Gerard matter. I told her that you have been retained and I will provide her with a copy of our Services Agreement which is really all she needs as assurance I'm not representing myself in this matter.

Lastly please include Joe Hurtado in all future email correspondence between us.

I really look forward to working with you and your firm as we work to bring these matters to their ultimate resolutions.

Sincerely,

Darryl Cotton

Service Contract 6-13-17.pdf  
2897K

# FINCH • THORNTON • BAIRD<sup>LLP</sup>

ATTORNEYS AT LAW

David S. Demian  
ddemian@ftblaw.com

File 999.002

June 13, 2017

VIA U.S. AND ELECTRONIC MAIL

Mr. Darryl Cotton  
6176 Federal Boulevard  
San Diego, California 92114  
indagrodarryl@gmail.com

Re: Services Agreement For Representation Of Darryl Cotton

Dear Mr. Cotton:

We appreciate your decision to retain Finch, Thornton & Baird, LLP. Please forgive the formality of this letter but the California Business and Professions Code requires that we have a written agreement. This letter sets forth the terms of our representation.

1. Description Of Representation And Services. You retain Finch, Thornton & Baird, LLP to represent you in connection with obtaining a conditional use permit ("CUP") for 6176 Federal Boulevard and also to represent you in related civil and forfeiture actions related to the property. We will provide other services as requested and provided we agree to perform such services. All services shall be subject to this agreement.

2. Fees To Be Charged. Our fees will be billed on the basis of time expended at the hourly billing rates of the attorneys, law clerks and legal assistants involved. At the present time, our hourly rates vary from \$210.00 to \$420.00 for attorneys, \$195.00 to \$210.00 for law clerks and \$75.00 to \$125.00 for paralegal and legal assistants. My current hourly rate is \$400.00. Adam Witt's current hourly rate is \$300.00. These hourly rates are subject to change in the future and typically increase in September of each year. The rate(s) charged will be reflected on the invoices for services rendered. We bill in one-tenth of an hour increments. In order to deliver cost-effective services, when practical, work will be assigned to other qualified attorneys, law clerks or legal assistants with either billing rates lower than mine or some specialized knowledge beneficial to you.

3. Costs And Expenses. We also charge for expenses and costs necessarily incurred to perform our services. Examples of these are Secretary of State fees, California Department of Corporations fees, court filing fees, service of process fees, deposition court reporter and transcript costs, etc. It is our policy to not charge for minor everyday expenses such as photocopies, postage, facsimiles, mileage, phone expenses, etc., unless these expenses become beyond the ordinary. For example, extra large reproductions or photocopying large quantities of documents for discovery, depositions or trial exhibits, etc., are usually costly and we will bill for reimbursement of such expenses or have you pay the vendor directly.



4. Services Of Experts/Consultants. It may become necessary to employ experts or consultants to assist in resolving a matter. We will obtain your approval for the retention of any such consultants or experts, and you may instruct us in writing at any time to terminate their services. The fees of experts and consultants will be in addition to the fees and costs charged for our services. In most circumstances, we will have the experts or consultants bill you directly.

5. Payment Of Legal Fees. For your convenience, we understand that we will be receiving payment for costs, expenses and fees relating to our legal services pursuant to this agreement from Joe Hurtado. Rather than billing you separately, one invoice will be forwarded to Joe.

Rule 3-310(F) of the Rules of Professional Conduct of the State Bar of California requires that we not accept compensation for representing a client from a person other than the client unless: (1) there is no interference with our independent professional judgment or with the attorney-client relationship; (2) information relating to representation of you is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) we obtain your informed written consent to such an arrangement. With regard to Rule 3-310(F), we do not believe there will be any interference with our independence of professional judgment or with the attorney-client relationship between our firm and you as a result of the payment of invoices by Joe because your interests are aligned. Note, you remain liable for all fees and costs if Joe fails to pay. We inform you of these matters and request your written consent to this arrangement. Execution of this agreement constitutes such written consent.

6. Client Responsibilities. We have two primary requests of our clients: (1) that we are kept informed of all information you obtain or discover regarding a matter for which we are retained; and (2) that we receive timely payment for our services and advances. In this regard, we invoice monthly and expect payment within 30 days. Any objection to an invoice must be made in writing within 30 days of the date of your receipt of the invoice or the objection is waived. At our option, late payments will accrue interest at the annual rate of seven percent. As security for the payment of our invoices, you grant us a lien upon any sums recovered (or which you are entitled to recover) as a result of our efforts, including any funds in our client trust account. This lien is in addition to our equitable lien rights.

With regard to our lien rights, Rule 3-300 of the Rules of Professional Conduct of the State Bar of California states:

"[We] shall not enter into a business relationship with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
- (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and



- (C) The client thereafter consents in writing to the terms of the transaction or the terms of acquisition."

You granting us a lien is an adverse and/or business relationship and pursuant to the above Rule we recommend you seek advice from an independent lawyer of your choice before granting us the lien and entering into this agreement.

7. Potential Conflicts Of Interest. Representation by us in a particular matter is contingent upon clearance of all conflicts of interest checks. With regard to this matter, Rules 3-310(C) through 3-310(E) of the Rules of Professional Conduct of the State Bar of California state:

Rule 3-310(C):

"[We] shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

Rule 3-310(E):

"[We] shall not accept employment adverse to a client or former client where, by reason of the representation of the client or former client, [we have] obtained confidential information material to the employment except with the informed written consent of the client or former client."

With regard to Rule 3-310(C), it is our duty not to represent clients whose interests potentially or actually conflict, unless each client provides us with informed written consent to such representation. Our current understanding of the available facts and applicable law leads us to believe the prospect for an actual or potential conflict is low. Accordingly, we believe we can represent you in a manner consistent with the professional standards by which we must abide. If this understanding changes in any material way, we will make appropriate disclosures to each of you so a proper course of action may then be pursued.

Although we believe there is only a limited potential for any conflict of interest, we inform you of potential conflicts that could theoretically arise. We do not foresee such a conflict will arise, but advise of the potential. As discussed, we represent the Green Road, LLC, and its principals and agents (collectively "Green Road") in connection with all aspects of the potential operation of a marijuana dispensary within District 6 of the City of San Diego. Our ability to continue to represent Green Road in all matters that



may arise in the future is critical to our firm, including in connection with potential disputes in which you are adverse to Green Road. Our understanding is that you have an interest in operating a marijuana dispensary in District 6 either directly or indirectly, and that our representation here is focused on obtaining a District 4 dispensary. Accordingly, we do not perceive a conflict here. However, in order to preserve our ability to represent Green Road should a conflict arise in the future, by signing this agreement you agree we may terminate our representation of you at any time of a potential or actual conflict arises between you and Green Road.

In addition, in the even of such a conflict, we may ask your consent to represent you and Green Road concurrently. You each acknowledge that if any party refuses to sign such a waiver our firm reserves the right to terminate our representation of you. Similarly, if we do undertake representation adverse to you, you agree not to seek the disqualification of our firm unless you present court-admissible evidence that our firm (a) has material confidential information from you in the matter in which a conflict is claimed, (b) obtained such material confidential information by virtue of our representation of you, and (c) such information could be used against you in the case in which a conflict is claimed. Note that our withdrawal from representation of you could be expensive (bringing new counsel up to speed), disadvantageous (sending the wrong message to an adversary), or come at an inopportune time.

By execution of this agreement, you acknowledge our warnings of potential conflicts of interest with respect to this matter, and waive any and all conflicts of interest which presently exist, or may hereafter arise, by virtue of our representation. Before consenting to our representation on these terms, we recommend you carefully consider the ramifications of our representation on these terms and consult with counsel of your choice.

8. Disclaimer Of Guarantees. It is impossible for us to make any guarantees regarding the successful termination of a matter and all expressions relative to the merits of your positions are only matters of our opinion and do not constitute a guarantee of a particular result.

9. Client Contact. It is our practice to furnish our clients with copies of all important pleadings and/or correspondence and to give verbal or written status reports from time to time concerning the progress of our representation. We encourage you to contact us if you have any questions concerning the status of our representation.

10. Termination Or Withdrawal. You have the right to terminate our services at any time. We may withdraw from representation upon reasonable written notice to enable you to secure other counsel due to: (1) the dissolution of our firm; (2) the discovery of evidence that your claim, suit or position lacks merit; (3) your non-cooperation or material breach of this agreement; and/or (4) the discovery of an irreconcilable conflict of interest. In the event of termination or withdrawal, we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring the files. Similarly, if at any time, during or after our representation, you request your client files, you agree we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring said files.

Mr. Darryl Cotton  
June 13, 2017  
Page 5 of 6

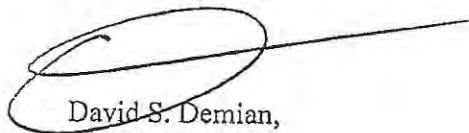
11. Retainer. We request a retainer of \$10,000.00 as an initial payment for our invoices. The retainer will be placed in the Finch, Thornton & Baird, LLP Client Trust Account, and we are authorized to make disbursements into our firm account to cover amounts we invoice you. Our monthly invoices will show the amount charged against the retainer and the retainer balance. We may request this retainer be replenished monthly or from time to time. The retainer amount is not a representation of the estimated total fees, costs and expenses likely to be incurred in the course of our representation. If we allow the retainer to be depleted, you agree to comply with the billing and payment provisions set forth above. You may pay this retainer by check, payable to Finch, Thornton & Baird, LLP Client Trust Account or by going on our website <http://www.ftblaw.com/bill-pay/>. Click on the RETAINER PAYMENT button and pay via credit card. Once the retainer is depleted and you receive invoices for a balance due, you may use this same site to make credit card payments, by clicking the INVOICE PAYMENT button.

12. Arbitration. Any dispute relating to fees and costs due pursuant to this agreement shall, at your discretion and upon timely demand, be submitted to binding arbitration before the San Diego County Bar Association pursuant to California Business and Professions Code section 6200, et seq., or should that organization decline to arbitrate the dispute, before the State Bar of California pursuant to California Business and Professions Code section 6200, et seq.

Subject to the foregoing requirements of California Business and Professions Code section 6200, et seq., any controversy or claim arising out of or relating to this agreement shall be resolved by binding arbitration before the American Arbitration Association by a single arbitrator in San Diego, California, in accordance with the Commercial Rules of the American Arbitration Association prevailing at the time of the arbitration and judgment on the award may be entered in any court having jurisdiction. The right to appeal from the arbitrator's award, any judgment entered, or any order made is expressly waived.

13. Conclusion. To confirm this letter accurately reflects our complete and mutual understanding as to the terms of our agreement, please date, sign and return an original agreement along with a check for \$10,000.00 in the enclosed addressed and stamped envelope. A duplicate original is enclosed for you. Thank you for the opportunity to be of service.

Very truly yours,



David S. Demian,  
Partner

Enclosures

DSD:hkr/3BD2583

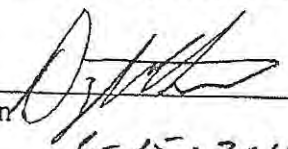
cc: Mr. Joe Hurtado (via email only) (w/o encls.)



Mr. Darryl Cotton  
June 13, 2017  
Page 6 of 6

AUTHORIZATION, CONSENT, AND ACKNOWLEDGMENT:

I have read and understand this services agreement. I acknowledge receiving full disclosure of the terms of the conflicts of entering the transaction described above. I understand I may seek independent counsel before signing this agreement. I consent on behalf of the entity listed below to the representation by Finch, Thornton & Baird, LLP, as described above.

Signature:   
Darryl Cotton  
Dated: 6-15-2017

Finch, Thornton & Baird, LLP is authorized to accept direction as to the representation of you from the following individuals:

Darryl Cotton  6-15-17  
\_\_\_\_\_  
\_\_\_\_\_

**BILLING INFORMATION**

- (1) Please provide the name of the person to whom our invoices should be addressed.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Work Phone)

\_\_\_\_\_  
(Direct Phone)

\_\_\_\_\_  
(Fax)

\_\_\_\_\_  
(Mobile Phone)

\_\_\_\_\_  
(E-mail)

- (2) Please provide the name of your accounts payable contact.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Work Phone)

\_\_\_\_\_  
(Direct Phone)

\_\_\_\_\_  
(Fax)

\_\_\_\_\_  
(Mobile Phone)

\_\_\_\_\_  
(E-mail)

- (3) How would you like to receive your invoices? (Select One) E-mail: ☐ Mail: ☐
- (4) Would you like to receive wiring instructions? (Select One) Yes: ☐ No: ☐

**FINCH • THORNTON • BAIRD™**

ATTORNEYS AT LAW

4747 Executive Drive ♦ Suite 700 ♦ San Diego, California 92121-3107  
Telephone: (858) 737-3100 ♦ Facsimile: (858) 737-3101 ♦ [www.ftblaw.com](http://www.ftblaw.com)



EXHIBIT 7

1 FERRIS & BRITTON  
2 A Professional Corporation  
3 Michael R. Weinstein (SBN 106464)  
4 Scott H. Toothacre (SBN 146530)  
5 501 West Broadway, Suite 1450  
6 San Diego, California 92101  
7 Telephone: (619) 233-3131  
8 Fax: (619) 232-9316  
9 mweinstein@ferrisbritton.com  
10 stoothacre@ferrisbritton.com

11 AUSTIN LEGAL GROUP, APC  
12 3990 Old Town Ave., Ste. A112  
13 San Diego, CA 92110  
14 Telephone: (619) 924-9600  
15 Fax: (619) 881-0045  
16 gaustin@austinlegalgroup.com

17 Attorneys for Real Parties in Interest  
18 LARRY GERACI and REBECCA BERRY

19 SUPERIOR COURT OF CALIFORNIA  
20 COUNTY OF SAN DIEGO, CENTRAL DIVISION

21 DARRYL COTTON, an individual,  
22  
23 Petitioner/Plaintiff,

24 v.

25 CITY OF SAN DIEGO, a public entity; and  
26 DOES 1 through 25,

27 Respondents/Defendants.

28 REBECCA BERRY, an individual; LARRY  
GERACE, an individual, and ROES 1 through  
25,

Real Parties In Interest.

Case No. 37-2017-00037675-CU-WM-CTL

Judge: Hon. Eddie Sturgeon

DECLARATION OF ABHAY  
SCHWEITZER IN SUPPORT OF  
OPPOSITION TO EX PARTE  
APPLICATION FOR ISSUANCE OF AN  
ALTERNATIVE WRIT OF MANDATE  
OR FOR AN ORDER SETTING AN  
EXPEDITED HEARING AND BRIEFING  
SCHEDULE

[IMAGED FILE]

DATE: October 31, 2017  
TIME: 8:30 a.m.  
DEPT: C-67

Petition Filed: October 6, 2017  
Trial Date: None



1 I, Abhay Schweitzer, declare:

2 1. I am over the age of 18 and am not a party to this action. I have personal knowledge of  
3 the facts stated in this declaration. If called as a witness, I would testify competently thereto. I  
4 provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real-  
5 Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or  
6 for an order setting an expedited hearing and briefing schedule.

7 2. I am a building designer in the state of California and a Principal with Techne, a design  
8 firm I founded in approximately December 2010. Techne provides design services to clients  
9 throughout California. Our offices are located at 3956 30<sup>th</sup> Street, San Diego, CA 92104. Our firm  
10 has worked on approximately 30 medical marijuana projects over the past 5 years, including a number  
11 of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of  
12 San Diego ("City"). One of these projects was and is an application for a MMCC to be located at 6176  
13 Federal Ave., San Diego, CA 92105 (the "Property").

14 3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services  
15 in connection with the application for a MMCC to be developed and built at the Property (the  
16 "Project"). Those services included, but are not limited to, services in connection with the design of  
17 the Project and application for a Conditional Use Permit (the "CUP").]

18 4. The first step in obtaining a CUP is to submit an application to the City of San Diego.  
19 My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible  
20 for preparing the noticing package and radius maps) prepared the CUP application for the client as  
21 well as prepared the supporting plans and documentation. My firm coordinated their work and  
22 incorporated it into the submittal.

23 5. On or after October 31, 2016, I submitted the application to the City for a CUP for a  
24 medical marijuana consumer cooperative to be located on the Property. The CUP application for the  
25 Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe  
26 was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the  
27 submission of several forms to the City, including Form DS-318, that I am informed and believe was  
28

1 signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and  
2 correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in  
3 Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of  
4 Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule  
5 (hereafter "RPINOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6 6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the  
7 form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from  
8 which to choose when checking - "Owner", "Tenant/Lessee" and "Redevelopment Agency". The  
9 purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and*  
10 *must be signed by all persons with an interest in the property.*

11 7. The CUP application process generally involves several rounds of comments from the  
12 City in which the applicant is required to respond in order to "clear" the comment. This processing  
13 involved substantial communication back and forth with the City, with the City asking for additional  
14 information, or asking for changes, and our responding to those requests for additional information and  
15 making any necessary changes to the plans. I have been the principal person involved in dealings with  
16 the City of San Diego in connection with the application for a CUP. My primary contact at the City  
17 during the process is and has been Firouzdeh Tirandazi, Development Project Manager, City of San  
18 Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to  
19 be the project manager for our CUP application.

20 8. We have been engaged in the application process for this CUP application for  
21 approximately twelve (12) months so far.

22 9. At the outset of the review process a difficulty was encountered that delayed the  
23 processing of the application. The Project was located in an area zoned "CO" which supposedly  
24 included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not  
25 specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the  
26 City passed a new regulation that amended the zoning ordinance to clarify that operating a medical  
27 marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this  
28



1 regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and  
2 the City resumed its processing of the CUP application.

3 10. The CUP application for this Project has completed the initial phase of the process.  
4 This initial phase was completed when the City deemed the CUP application complete (although not  
5 yet approved) and determined the Project was located in an area with proper zoning. When this  
6 occurred, as required, notice of the proposed project was given to the public as follows: First, on  
7 March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for  
8 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second,  
9 the City mailed the Notice of Application to all properties within 300 feet of the subject property.  
10 Third, as applicant we posted the Notice of Application at the property line as was required.

11 11. Since the completion of the initial phase of the process we have been engaged in  
12 successive submissions and reviews and are presently engaged still in that submission and review  
13 process. The most recent comments from the City were received on October 20, 2017. There is one  
14 major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the  
15 next six (6) weeks.

16 12. Once the City has cleared all the outstanding issues it will issue an environmental  
17 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination  
18 ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

19 13. The NORA must be published for 10 business days. If no interested party appeals the  
20 NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The  
21 hearing is usually set on at least 30 days' notice so the City's Staff has time to prepare a report with its  
22 recommendations regarding the issues on which the hearing officer must make findings. If there is no  
23 appeal of the NORA, I expect the hearing before the hearing officer to be held in late January or  
24 February 2018.

25 14. If the NORA is appealed it will be set for hearing before the City Council. It is my  
26 opinion that the earliest an appeal of the NORA could be heard before the City Council would be mid-  
27 January 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical  
28

1  
2 marijuana CUP application. The one NORA appeal that was upheld is a project located in a flood  
3 zone.

4 15. If there is a NORA appeal and such appeal is denied by the City Council, then the  
5 earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

6 16. If there is a NORA appeal and it is upheld by the City Council, the City Council would  
7 retain jurisdiction and the CUP application would be heard by the City Council for a final  
8 determination at some point after the NORA appeal. In that case the earliest I would expect this to  
9 occur would also be March 2018.

10 17. To date we have not yet reached the stage of a City Council hearing and there has been  
11 no final determination to approve the CUP.

12 18. I have been notified by the City of San Diego that as of October 30, 2017, there has been  
13 no other CUP Application submitted concerning on the property.

14  
15 I declare under penalty of perjury under the laws of the State of California, that the foregoing is  
16 true and correct. Executed this 30th day of October, 2017.

17  
18 Dated: 10/30/2017

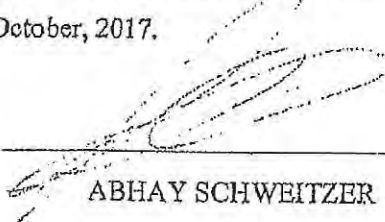
  
19  
20 ABHAY SCHWEITZER  
21  
22  
23  
24  
25  
26  
27  
28



EXHIBIT 8

1 I, Elizabeth Emerson, hereby declare:

- 2 1. I have personal knowledge of the facts I state below, and if I were to be called as a  
3 witness, I could competently testify about what I have written in this declaration.
- 4 2. I am 41 years old and an Air Force veteran. I served my country honorably in military  
5 intelligence and held a Top Secret clearance for all seven years of my service.
- 6 3. I later served as a police dispatcher in Texas for two years and left on good terms to move to  
7 San Diego, where I am now a resident.
- 8 4. I worked in Accounts Payable for the law firm of McCarthy & Holthus which I left after two  
9 and a half years to start my own bookkeeping, accounting and administrative assistant  
10 enterprise. Because of this I now handle the accounting for GreenerLiving, a landscape and  
11 lawn maintenance company, which is co-owned by Mr. Tom Maas and Mr. Joe Hurtado.
- 12 5. I accompanied Mr. Maas and Mr. Hurtado to the hearing for Mr. Cotton on December 7,  
13 2017 as it was strongly anticipated that this hearing would produce positive results for Mr.  
14 Cotton and, thus, for Mr. Hurtado.
- 15 6. At the hearing, I was expecting Mr. Demian to mention what Mr. Hurtado repeatedly called  
16 the "smoking gun" email in which Mr. Larry Geraci contradicts himself regarding some  
17 contract. Mr. Demian did not raise any emails in his oral arguments to the Court.
- 18 7. During the hearing, the judge asked Mr. Weinstein what would be wrong with preventing  
19 the withdrawal of the CUP application. Mr. Weinstein replied with something about his  
20 client having the freedom to do what he wanted.
- 21 8. After the hearing concluded, Mr. Hurtado started yelling at Mr. Demian right outside the  
22 Courtroom about how it was possible that Mr. Demian could not raise with the Court "the  
23 fucking email!" Mr. Hurtado was incredibly agitated and loud and everyone in the hallway  
24 was staring at Mr. Hurtado and Mr. Demian.
- 25  
26  
27  
28



1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct.

3 DATED: 06/22/2015

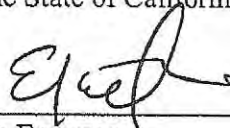
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6 Elizabeth Emerson  
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EXHIBIT 9





↑

[illegible][illegible]

↑



READ THIS WAY

5:53 PM Daryl Fed B  
Just sent over  
That email is not going through could you recheck it for me  
I just sent you a TEST SEND email  
I love it!

5:53 PM Daryl Fed B  
Can we get together on Monday at about noon?  
Fri, Oct 28, 10:07 AM

5:53 PM Daryl Fed B  
point  
Yes  
Can you bring a copy of the grant dead  
You need to hear this  
Are you available for a call?  
Tue, Nov 1, 5:43 PM  
Can you give me a call?  
Tue, Nov 1, 2:21 PM  
Crazy day today can I give you a call tomorrow morning  
Yes

5:53 PM Daryl Fed B  
Good morning  
Are you available for a call?  
Wed, Nov 2, 10:43 AM

5:53 PM Daryl Fed B  
Sure  
I'll be there  
Mon, Oct 31, 6:11 AM

5:53 PM Daryl Fed B  
Clean and to the  
Thank you I just sent the plans back to you

5:53 PM Daryl Fed B  
Lemon Grove shot down measure v. No to dispensaries to  
Wed, Nov 9, 4:01 PM  
Only missed by 1%  
Hell YEAH!  
Mon, Nov 14, 12:26 AM  
I just sent you an email they just

5:53 PM Daryl Fed B  
Did they accept the CUP application?  
No news yet  
How goes it?  
Wed, Nov 16, 1:20 PM

5:53 PM Daryl Fed B  
Need a quick signature and send back to me if you can get that back ASAP I'd appreciate it  
Thank you

5:54 PM Daryl Fed B  
Were still getting through them exceeding the property  
Once the property is approved then I believe we're set to go  
Fri, Nov 18, 11:58 AM  
Did you talk with matt on the cv dispensary?  
Yeah I did but he said that didn't

5:54 PM Daryl Fed B  
Greetings.  
Do you have time for a quick chat?  
Wed, Nov 30, 7:26 PM  
Hi Daryl I've been in meetings

5:54 PM Daryl Fed B  
Perfect  
Do you have a moment for a call?  
Mon, Dec 12, 12:47 AM  
Hi Daryl I've been in meetings

5:54 PM Daryl Fed B  
That's fine. Give me call when you can.  
Mon, Dec 12, 5:42 PM  
Can you talk?  
Wed, Dec 14, 3:40 PM  
Something you should know before tomorrow

5:54 PM Daryl Fed B  
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  
Wed, Jan 4, 12:20 PM  
Get better and tvt

5:54 PM Daryl Fed B  
should know before tomorrow's meeting. Can you take a call?  
Hi Daryl you're about two hours  
Wed, Jan 4, 12:20 PM  
Get better and tvt

5:54 PM Daryl Fed B  
Any better?  
Thu, Jan 5, 9:52 AM  
Can you call me. If for any reason you're not moving forward I need to know.  
Fri, Jan 6, 8:43 AM  
I'm at the doctor

5:54 PM Daryl Fed B  
Get better and tvt

READ THIS WAY

4

READ THIS WAY.

[illegible]

Black Day 1: 1954

Just received  
your email and  
response is  
forthcoming

124m, May 1 1931.

(1/2) I am cleaning up my documents and am about to head to the court to file. if you want to resolve this, respond to my

I've been in meetings all morning and nothing will be accomplished if I don't do it right now," he says.

Dale just knows what you

**READ THIS WAY**



EXHIBIT 10



Joe Hurtado &lt;j.hurtado1@gmail.com&gt;

## Federal - Expedited Schedule / Statute of Frauds

Joe Hurtado &lt;j.hurtado1@gmail.com&gt;

To: "David S. Demian" <dmdamian@ftblaw.com>, "Adam C. Will" <awill@ftblaw.com>  
Cc: Darryl Cotton <indagrodarryl@gmail.com>

Thu, Nov 16, 2017 at 10:45 AM

Hi David / Adam,

Expedited Hearing and Briefing Schedule. I'm putting together my notes / thoughts for the request for the motion to expedite. I will forward later today or tomorrow at the latest and hopefully it is helpful. (I have listed every argument and point they make in all of the pleadings to date, we have a logical and persuasive response for every point.)

Statute of Frauds. I came across a case last night that I think would be incredibly supportive if not actually dispositive on the statute of frauds issue we faced in the demurer. (I was so incredibly frustrated last night thinking I found "the one case" and all I needed to do was Shepardize the case to confirm and find. Ideally, more recent supporting case law. Best I got were treatises and Google Scholar hits - I'm calling and signing up with Westlaw or Lexis today.)

The case is *Monarco v. Lo Greco* (35 Cal. 2d 621, 220 P.2d 737, 1950 Cal. 370). The below includes language copied from the case and online case brief websites and treatises:

**Issue.** "The controlling question is whether plaintiff is estopped from relying upon the statute of frauds to defeat the enforcement of the oral agreement."

**Rule of Law.** "The California Supreme Court decided in *Monarco v. Lo Greco* that a party is estopped to assert the Statute of Frauds if he would be unjustly enriched or when unconscionable injury would result to the other party who, in reliance on the oral agreement, was induced to materially change his position."

- "Since the test in *Monarco* is so general, the trial courts have the considerable flexibility to determine whether to enforce the Statute in a given case. While this makes predictability uncertain, it affords the trial court the opportunity to consider the whole spectrum of factors which might be relevant to balancing the adequacy of the fact determination process against the purposes of the Statute. Such freedom for the trial court is justifiable if final procedure has advanced to such an extent that it is adequate to protect against the evils which the Statute sought to prevent."

**Analysis.**

**Unjust Enrichment.** The evidence is clear that Geraci is attempting to falsely claim the receipt for the \$10,000 is actually the final agreement, thereby unjustly enriching himself at the expense of the benefits that Cotton bargained for, *inter alia*, Cotton's 10% equity stake.

**Unconscionable Injury.** Because of Geraci, Cotton has:

(a) been unable to make a living. He is unable to operate his businesses, Fleet Systems (electrical contracting) and Dalbercia (manufacturing), that operate from the property. This action has created the possibility that he will lose the property and not have any funds to relocate to another property to operate from (i.e., he can't enter into contracts and make a living because if he does and then loses this case, then he has no property to work from, won't be able to uphold his end of the contracts and he would be setting himself up for severe damages);

(b) been forced to repeatedly renegotiate the terms of the sale of the property with his agent and the buyer of the property, most notably requiring him to give up the 20% equity stake that he originally bargained for with RJ. This represents a perpetual long-term revenue cash flow to Cotton that, while impossible to quantify what it could be in a best case scenario if the business were to be a commercial success, is at the very least a perpetual monthly payment of \$10,000.

It appears this case is helpful for us - hopefully this case has not been overturned and/or the websites I got this information from are not inaccurate. Please let me know your thoughts.

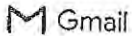
Geraci Declaration. When you have a moment, I would appreciate if you would forward Geraci's supporting declaration to his opposition to our *ex parte* motion for an expedited hearing/schedule. The PDF forwarded is missing the first three pages of his declaration (attached, missing pages start at page 68).

Thank you, Joe

3C28056-OPPOSITION TO EX PARTE APPLICA (1).PDF  
4640K



EXHIBIT 11



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

## RE: Withdrawal

David S. Demian <ddemian@ftblaw.com>  
 To: Darryl Cotton <indagrodarryl@gmail.com>  
 Cc: Joe Hurtado <j.hurtado1@gmail.com>

Thu, Dec 7, 2017 at 1:56 PM

Per your request, attached are substitution of attorney forms which must be filed with the Court in all three pending matters. Please sign and email back to us for filing as soon as possible.

With your consent, we will contact Weinstein to move next week's depositions to be re-noticed after you have retained new counsel. To avoid any harm to you this must be addressed this week so please advise if you agree promptly.

As to the reasons for our termination, I respectfully disagree with the characterization of the hearing. Also, as to the City Attorney, she told me my papers and oral argument were excellent. She did not say we should have won.

We are preparing final invoices and your files will be made available for you or your new counsel as quickly as possible.

Best,

David

David S. Demian Partner

Finch, Thornton & Baird, LLP Attorneys At Law  
 4747 Executive Drive, Suite 700 San Diego, CA 92121  
 T 658.737.3100 D 658.737.3118 M 658.245.2451 F 658.737.3101

ftblaw.com Bio LinkedIn

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]  
 Sent: Thursday, December 07, 2017 12:33 PM  
 To: David S. Demian <ddemian@ftblaw.com>  
 Cc: Joe Hurtado <j.hurtado1@gmail.com>  
 Subject: Re: Withdrawal

David,

I spoke with Joe and he informed me that you were not familiar with the points in the P&A for the TRO motion and that you did not raise them before the Court when they were directly on point and necessary to be raised as a response to Weinstein's arguments. Further, that the attorney for the City explicitly told you right after you walked out of the hearing that we should have won based on the moving papers!

Our relationship is terminated, but I need it to be clear that it is based on your performance today at the hearing. Joe is already looking for new counsel to represent me and we will be submitting a motion for reconsideration with the Court.

- Darryl

On Thu, Dec 7, 2017 at 11:33 AM, David S. Demian <ddemian@ftblaw.com> wrote:

Gentlemen: Per my discussion with Joe post-hearing and my voice mail to Darryl it is apparent our withdrawal from the case is the next step. I will be sending the consent form and filing and preparing the file for your delivery. You should immediately seek advice of new counsel.

Please call at any time with questions.

David

David S. Demian Partner


Finch, Thornton & Baird, LLP Attorneys At Law  
 4747 Executive Drive, Suite 700 San Diego, CA 92121  
 T 658.737.3100 D 658.737.3118 M 658.245.2451 F 658.737.3101


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3 attachments

 Sub of Att - Forfeiture Matter.pdf  
66K

 Sub of Att - Writ Matter.pdf  
65K


 Sub of Att - Geraci Matter.pdf  
63K

EXHIBIT 12



**FINCH • THORNTON • BAIRD <sup>LLP</sup>**

ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121  
T 858.737.3100 F 858.737.3101 ftblaw.comMr. Darryl Cotton  
6176 Federal Boulevard  
San Diego, CA 92114January 10, 2018  
Account No: 2403-003  
Statement No: 150904

For Legal Services Rendered through December 31, 2017

**Total Balance Due** \$9,913.95

Re: Forfeiture Action

		Rate	Hours	
12/04/17	ACW Correspondence with Joe and Darryl regarding upcoming deadline to make payment to City.	330.00	0.20	66.00

**Recapitulation**

		Rate	Hours	
ACW	Adam C. Witt - Associate	330.00	0.20	66.00
<b>For Current Services Rendered</b>				<u><b>\$66.00</b></u>

**Expenses/Advances**

Date	Description	Amount
12/11/17	One Legal's fee for e-filing substitution of attorney. Inv. No. 11145398 - One Legal LLC	9.95
<b>Total Expenses/Advances</b>		<u><b>\$9.95</b></u>

**Total Current Work** **\$75.95**

Previous Balance 9,838.00

Payments/Adjustments Since Last Bill -0.00

**Balance Due** **\$9,913.95**

Account Number: 2403 - 003  
Statement No: 150904

January 10, 2018  
Page 2

Payments received after January 10, 2018 are not included in this statement.

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Mr. Darryl Cotton  
6176 Federal Boulevard  
San Diego, CA 92114

January 10, 2018  
Account No: 2403-002  
Statement No: 150903

For Legal Services Rendered through December 31, 2017

Total Balance Due

\$42,020.48

Re: 6176 Federal Boulevard Conditional Use Permit

		Rate	Hours		
12/01/17	SLH	Analyze status and developments of CUP application (1.0); analyze opposition to ex parte application with respect to same (0.5); prepare public records act request for documents and correspondence with respect to City, Geraci, and related parties (0.5).	300.00	2.00	600.00
12/01/17	RSB	Prepare electronic stipulation to accept pleadings and other documents through email.	225.00	0.20	45.00
12/01/17	ACW	Work on developing strategy for writ and ex parte relief regarding CUP application.	330.00	1.10	363.00
12/01/17	DSD	Further work on ex parte motions and strategy.	415.00	2.40	996.00
12/03/17	DSD	Discussion with Joe on options for saving permit by concurrent actions.	415.00	1.00	415.00
12/04/17	DSD	Analyze case of Monarco in connection with effort acquire CUP; work on application for peremptory writ.	415.00	1.40	581.00
12/04/17	RSB	Revise ex parte application to incorporate Joe Hurtado's analysis.	225.00	1.70	382.50
12/04/17	SLH	Conference to analyze San Diego Municipal Code provisions for application resubmittal.	300.00	0.20	60.00
12/04/17	DSD	Final correspondence to Weinstein regarding stipulation.	415.00	0.40	166.00
12/04/17	DSD	Correspondence to Weinstein as to e-service.	415.00	0.20	83.00
12/04/17	DSD	Analyze mandatory injunction options; work on proposed order.	415.00	0.50	207.50
12/04/17	DSD	Begin work on proposed order.	415.00	0.60	249.00
12/04/17	RSB	Revise ex parte application (0.5) and Cotton's and Demian's declarations to reflect Hurtado's latest insights (0.3).	225.00	0.80	180.00
12/04/17	DSD	Further work on writ application.	415.00	1.20	498.00
12/04/17	ACW	Work on proposal to attorney Weinstein regarding stipulation on CUP application.	330.00	0.80	264.00
12/05/17	DSD	Further work on writ request.	415.00	0.60	249.00
12/05/17	CRS	Review and work on edits to memorandum in support of ex parte for an order shortening time for writ hearing.	355.00	1.70	603.50

Account Number: 2403 - 002  
Statement No: 150903

January 10, 2018  
Page 2

			Rate	Hours	
12/05/17	RSB	Finalize writ/ex parte application and all supporting documentation.	225.00	0.60	135.00
12/05/17	DSD	Discussion with Joe on arguments as to damages and injury.	415.00	0.50	207.50
12/05/17	DSD	Analyze and work on arguments as to injury.	415.00	1.80	747.00
12/05/17	DSD	Final motion for peremptory writ.	415.00	1.50	622.50
12/05/17	DSD	Final declaration of Cotton; discussion with Darryl.	415.00	0.20	83.00
12/05/17	DSD	Correspondence to counsels with notice of ex parte.	415.00	0.20	83.00
12/06/17	DSD	Discussion with Joe finalizing motion on writ.	415.00	0.40	166.00
12/06/17	DSD	Finalize motion on writ.	415.00	0.40	166.00
12/06/17	DSD	Revise declaration of Darryl per his comments.	415.00	0.50	207.50
12/06/17	DSD	Further work on P&A to focus on arguments and reduce length.	415.00	0.70	290.50
12/07/17	DSD	Appear at ex parte hearing on writ.	415.00	0.80	332.00

**Recapitulation**

		Rate	Hours	
DSD	David Demian - Partner	415.00	15.30	6,349.50
RSB	Rishi S. Bhatt - Associate	225.00	3.30	742.50
SLH	Steven L. Hwang - Associate	300.00	2.20	660.00
CRS	Christopher Sillari - Partner	355.00	1.70	603.50
ACW	Adam C. Witt - Associate	330.00	1.90	627.00
<b>For Current Services Rendered</b>			<b>24.40</b>	<b>\$8,982.50</b>

**Expenses/Advances**

Date	Description	Amount
12/07/17	Vendor fee of ex parte application, memorandum and declaration of David Demian. Inv. No. 4235732 - Knox Attorney Service	203.95
12/11/17	One Legal's fee for e-filing of substitution of attorney. Inv. No. 11145392 - One Legal LLC	9.95
<b>Total Expenses/Advances</b>		<b>\$213.90</b>

**Total Current Work** **\$9,196.40**

Previous Balance 32,824.08

Payments/Adjustments Since Last Bill -0.00

**Balance Due** **\$42,020.48**

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4747 Executive Drive, Suite 700 San Diego, CA 92121  
T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton  
6176 Federal Boulevard  
San Diego, CA 92114

January 10, 2018  
Account No: 2403-004  
Statement No: 150905

For Legal Services Rendered through December 31, 2017

**Total Balance Due**

**\$40,009.02**

Re: adv. Larry Geraci

			Rate	Hours	
12/01/17	RSB	Conference about lodging objections to Geraci's notice of deposition and accompanying production request.	225.00	0.20	45.00
12/01/17	RSB	Perform final analysis on the probability that Cotton will be able to obtain a TRO or a Preliminary Injunction as a way to force Geraci to quickly settle the case.	225.00	0.30	67.50
12/01/17	RSB	Analyze timing of when Cotton's objections to Notice of Deposition are due.	225.00	0.40	90.00
12/01/17	RSB	Further revise discovery responses.	225.00	0.20	45.00
12/01/17	CRS	Review draft discovery responses and work on edits to same.	355.00	1.80	639.00
12/01/17	CRS	Conference regarding objections to deposition notice and requests for documents, and work on strategy for same.	355.00	0.40	142.00
12/01/17	CRS	Conference regarding materials and outline to prepare for depositions.	355.00	0.20	71.00
12/01/17	RSB	Analyze California law regarding the one-year statute of limitations.	225.00	1.20	270.00
12/01/17	CRS	Conference regarding primary contract theory of case and strategy for defense of their alleged contract.	355.00	0.50	177.50
12/01/17	RSB	Conference about dedication of property to the City of San Diego.	225.00	0.20	45.00
12/01/17	CRS	Work on framework for stipulation on CUP and in the alternative, a narrow order for ex parte relief.	355.00	0.80	284.00
12/01/17	RSB	Continue analyzing how to frame the theory of the case for purposes of Cotton's upcoming discovery responses and deposition.	225.00	1.20	270.00
12/01/17	ACW	Work on document production requests in connection with deposition notices to Geraci and Berry.	330.00	1.40	462.00
12/01/17	DSD	Work on case arguments for ex parte and detailed correspondence to Joe and Darryl with strategy for motions.	415.00	3.20	1,328.00
12/01/17	DSD	Conference as to attorney-client privilege issues in case and analyze same.	415.00	0.50	207.50



			Rate	Hours	
12/02/17	RSB	Continue analyzing how attorney-client privilege may apply to Joe Hurtado.	225.00	0.90	202.50
12/03/17	RSB	Draft points and authorities for Cotton's TRO against the City of San Diego.	225.00	3.50	787.50
12/03/17	CRS	Conference regarding application of attorney-client privilege for communications between Darryl and Hurtado.	355.00	0.30	106.50
12/04/17	RSB	Review proposed email to Geraci's attorney, Michael Weinstein, regarding a proposed stipulation pertaining to the CUP application (0.1); provide feedback (0.2)	225.00	0.30	67.50
12/04/17	CRS	Work on strategy for seeking TRO in addition to ex parte relief on the Writ.	355.00	0.80	284.00
12/04/17	RSB	Begin drafting the injunctive order for the Court to sign.	225.00	1.00	225.00
12/04/17	RSB	Review Hurtado's memo regarding the issuance of a TRO.	225.00	0.20	45.00
12/04/17	RSB	Continue drafting injunction.	225.00	1.10	247.50
12/04/17	CRS	Work on revisions to proposed order for ex parte hearing on TRO.	355.00	0.30	106.50
12/04/17	CRS	Work on framework and strategies for memorandum in support of ex parte for TRO.	355.00	1.50	532.50
12/04/17	ACW	Conference to work on strategy for ex parte application for injunctive relief.	330.00	0.30	99.00
12/05/17	RSB	Revise ex parte application.	225.00	1.40	315.00
12/05/17	RSB	Review Hurtado's email regarding lis pendens and attorney fees (0.2); analyze cases cited therein (0.4).	225.00	0.60	135.00
12/05/17	RSB	Revise Cotton declaration to contain the terms of the parties' contract and to contain the Geraci-Cotton email exchange reflecting the same.	225.00	2.50	562.50
12/05/17	RSB	Continue to revise TRO for tomorrow's ex parte hearing.	225.00	3.00	675.00
12/05/17	RSB	Further revise ex parte application materials for tomorrow.	225.00	2.50	562.50
12/05/17	CRS	Work on memorandum in support of TRO and strategize for order in support of same.	355.00	2.00	710.00
12/05/17	RSB	Further work on ex parte application and TRO for tomorrow.	225.00	1.50	337.50
12/05/17	DSD	Work on motion for TRO, arguments on breach of contract.	415.00	2.10	871.50
12/05/17	DSD	Work on motion for TRO, revise declaration of Cotton.	415.00	1.50	622.50
12/05/17	DSD	Work on Declaration of Demian in support of TRO.	415.00	0.50	207.50
12/05/17	DSD	Correspondence to counsels with notice of ex parte.	415.00	0.20	83.00
12/06/17	RSB	Perform last minute revisions to the TRO and ex parte that is going out today.	225.00	1.10	247.50
12/06/17	DSD	Discussion with Joe no ex parte for TRO/PI.	415.00	0.30	124.50
12/06/17	DSD	Further work on motion arguments for writ as to Schweitzer section on CUP timing; work on declaration as to same.	415.00	0.30	124.50
12/06/17	DSD	Review declaration exhibits of Darryl and revise numbering.	415.00	0.50	207.50
12/06/17	CRS	Conference regarding last changes to memorandum in support of TRO.	355.00	0.30	106.50
12/06/17	CRS	Conference regarding objections to deposition notices.	355.00	0.30	106.50
12/06/17	DSD	Prepare responses to document demands by Geraci as part of Darryl deposition; review prior responses and document production; discussion with Darryl as to same.	415.00	0.70	290.50
12/06/17	DSD	Final motion for TRO for filing.	415.00	1.50	622.50
12/06/17	DSD	Appear at ex parte on TR/preliminary injunction (1.0).	415.00	1.00	415.00

Account Number: 2403 - 004  
Statement No: 150905

January 10, 2018  
Page 3

			Rate	Hours	
12/06/17	DSD	Appear at ex parte on verified writ.	415.00	1.00	415.00
12/07/17	DSD	Appear at ex parte hearing on TRO.	415.00	0.80	332.00

**Recapitulation**

		Rate	Hours	
DSD	David Demian - Partner	415.00	14.10	5,851.50
RSB	Rishi S. Bhatt - Associate	225.00	23.30	5,242.50
CRS	Christopher Sillari - Partner	355.00	9.20	3,266.00
ACW	Adam C. Witt - Associate	330.00	1.70	561.00
<b>For Current Services Rendered</b>				
			48.30	\$14,921.00

**Expenses/Advances**

Date	Description	Amount
11/30/17	Delivery of notice of deposition to Michael Weinstein at Ferris & Britton on November 30, 2017. Inv. No. 3497179 - Golden State Overnight	16.59
12/07/17	Vendor fee for filing ex parte application, memorandum and declaration of David Demian. Inv. No. 4235733 - Knox Attorney Service	148.55
12/11/17	One Legal's fee for e-filing of substitution of attorney. Inv. No. 11145359 - One Legal LLC	9.95
<b>Total Expenses/Advances</b>		<u>\$175.09</u>

<b>Total Current Work</b>	<u><b>\$15,096.09</b></u>
---------------------------	---------------------------

Previous Balance	24,912.93
------------------	-----------

Payments/Adjustments Since Last Bill	-0.00
--------------------------------------	-------

<b>Balance Due</b>	<u><b>\$40,009.02</b></u>
--------------------	---------------------------

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

Payment is due within 30 days of the invoice date.

Please contact us within 10 days of the invoice date with any questions. Thank you.

To pay online visit: <http://www.ftblaw.com/bill-pay/>



EXHIBIT 13



H

Account: 1310536032 08  
Date Mailed: 01/12/18

Service Address: 6176 FEDERAL BLVD

**URGENT NOTICE!  
PAYMENT REQUEST**

**RE-INSTATED SECURITY DEPOSIT**

We are requesting a \$4,267.00 Security Deposit. Your Security Deposit request, which was previously waived, is now being re-instated as your bills have not been paid on time.

A payment is requested in the amount of \$4,267.00 and must be received before the expiration date of 02/01/18 to avoid the disconnection of service.

There will be a charge if collection action is required. Please refer to the back of this notice for additional information.

The bottom portion of this notice must accompany your payment. If you intend to mail your payment, you should do so at least three business days prior to the expiration date of this notice.

You can also make your payment online at no charge. Go to [sdge.com/myaccount](http://sdge.com/myaccount). We also offer electronic payment services, such as SDG&E Pay-By-Phone and Automatic Pay. For your convenience, you can also pay by using most ATM cards, debit cards, MasterCard® and Visa® credit cards and electronic checks by calling BillMatrix at 1-800-386-0067.

**Si necesita ayuda para interpretar este aviso llamenos a 1-800-311-7343.**

0008

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO.)

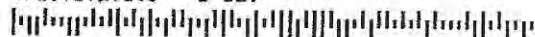


ACCOUNT NUMBER  
1310 536 032 3

DATE DUE	Feb 1, 2018
AMOUNT DUE	\$4,267.00

SERVICE ADDRESS: 6176 FEDERAL BLVD SAN DIEGO 92114

4726.1.2.108 1 oz.



DARRYL COTTON  
6184 FEDERAL BLVD  
SAN DIEGO CA 92114-1401

Please enter amount enclosed.

\$

Write account number on check and make payable to San Diego Gas & Electric.

SAN DIEGO GAS & ELECTRIC  
PO BOX 25111  
SANTA ANA CA 92799-5111



3 7 00000131053603200004267000000426700



**PLEASE NOTE:** This deposit less the amount of any unpaid bills will be refunded together with any interest due at the rate determined in accordance with the utility's Rule 7, Deposits, upon discontinuance of service or after the deposit has been held for 12 consecutive months during which time continuous gas and/or electric service has been received, and all bills for such service have been paid within the allowed number of days from the date mailed, in accordance with the Rules as approved by the Public Utilities Commission of the State of California.

No interest will be paid if service was temporarily or permanently disconnected for non-payment of bills within the past 12 months, or the account was past due more than once during the past six months or more than twice during the past 12 months.

Refund will be made by application to the account or by check, in which case endorsement of the check will constitute acknowledgement of receipt of refund and release the utility from any further claims against the deposit covered by this notice.



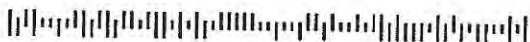




THE CITY OF SAN DIEGO

**WATER & WASTEWATER SERVICES**610000247582  
ACCOUNT NUMBER6184 FEDERAL BLVD  
SERVICE ADDRESS

ISSUE DATE: Jan 2, 2018

*a reminder...*Dec 21 2017  
PAYMENT DUE DATE1426 1 AV 0.373  
DARRYL G COTTON  
6176 FEDERAL BLVD  
SAN DIEGO CA 92114-14015-1  
01426**RETURN** THIS PORTION

MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000247582 2 0000025041 5 0

**\$250.41**  
TOTAL DUE NOW

THE CITY OF SAN DIEGO

**WATER & WASTEWATER SERVICES***a reminder...*

JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

ACCOUNT NO. 610000247582 DARRYL G COTTON  
SERVICE ADDRESS 6184 FEDERAL BLVDDec 21 2017  
PAYMENT WAS DUE**\$250.41**  
TOTAL NOW DUE

THE CITY OF SAN DIEGO PUBLIC UTILITIES DEPARTMENT WATER &amp; WASTEWATER SERVICES



THE CITY OF SAN DIEGO

# WATER & WASTEWATER SERVICES



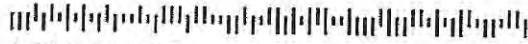
610000012730  
ACCOUNT NUMBER

6176 FEDERAL BLVD  
SERVICE ADDRESS

ISSUE DATE: Jan 2, 2018

*a reminder...*

Dec 21 2017  
PAYMENT DUE DATE



1425 1 AV 0.373  
FLEET ELECTRICAL CO  
C/O DARRYL G COTTON  
6176 FEDERAL BLVD  
SAN DIEGO CA 92114-1401

5-1  
01425

**RETURN** THIS PORTION

MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000012730 0 0000017998 6 0

**\$179.98**  
TOTAL DUE NOW



THE CITY OF SAN DIEGO

# WATER & WASTEWATER SERVICES



*a reminder...*

JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

ACCOUNT NO. 610000012730 FLEET ELECTRICAL CO  
SERVICE ADDRESS 6176 FEDERAL BLVD

Dec 21 2017  
PAYMENT WAS DUE

**\$179.98**  
TOTAL NOW DUE





A Semptra Energy utility

ACCOUNT NUMBER 1310 536 032 4  
SERVICE FOR  
DARRYL COTTON  
6176 FEDERAL BLVD  
SAN DIEGO, CA 92114

DATE MAILED Jan 12, 2018  
www.sdge.com  
1-800-336-SDGE (7343) English  
1-800-311-SDGE (7343) Español  
1-877-889-SDGE (7343) TTY  
M-F, 7am-8pm, Sat, 7am-6pm  
24 Hour Emergency Service

Page 1 of 6

## Account Summary

Previous Balance	\$2,120.28
Payment Received	- .00
Past Due Balance	\$2,120.28
Current Charges	+ 1,098.80
<b>Total Amount Due</b>	<b>\$3,219.08</b>

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

## Summary of Current Charges

(See page 2 for details)

Billing Period	Usage	Amount(\$)
Electric Dec 10, 2017 - Jan 10, 2018	4,561 kWh	1,083.96
Delayed Payment Charge (.7% on balance of \$2,120.28)		14.84
<b>Total Charges this Month</b>		<b>\$1,098.80</b>

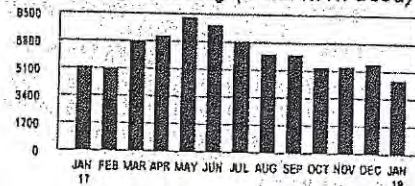
## Regulatory Notices

All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

DATE DUE ON RECEIPT

AMOUNT DUE \$3,219.08

## Electric Usage History (Total kWh used)



	Jan 17	Dec 17	Jan 18
Total kWh used	5,209	5,531	4,561
Daily average kWh	168.0	172.8	147.1
Days in billing cycle	31	32	31
Change in daily average from last month			- 14.9%
Change in daily average from last year			- 12.4%
Max monthly demand	16.3	17.1	16.0
Max annual demand			22.4

See Time of Use - Electricity information on page 3.

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)  
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A Semptra Energy utility

Save Paper &  
Postage  
PAY ONLINE  
www.sdge.com

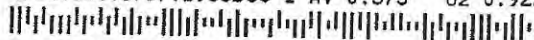
ACCOUNT NUMBER  
1310 536 032 4

DATE DUE ON RECEIPT

AMOUNT DUE \$3,219.08

SERVICE ADDRESS: 6176 FEDERAL BLVD SD 92114

4723.163.3717.1933536 1 AV 0.373 oz 0.922



DARRYL COTTON  
6184 FEDERAL BLVD  
SAN DIEGO CA 92114-1401

Please enter amount enclosed.

\$

Write account number on check and make payable to San Diego Gas & Electric.

SAN DIEGO GAS & ELECTRIC  
PO BOX 25111  
SANTA ANA CA 92799-5111

CY8

4 2 90000131053603200001094A000000072190A





A Sempra Energy utility

ACCOUNT NUMBER 9185 520 600 4  
SERVICE FOR  
DARRYL COTTON  
6184 FEDERAL BLVD  
SAN DIEGO, CA 92114

DATE MAILED Jan 12, 2018

Page 1 of 7

www.sdge.com

1-800-338-SDGE (7343) English  
1-800-311-SDGE (7343) Español  
1-877-889-SDGE (7343) TTY  
M-F, 7am-8pm, Sat, 7am-6pm  
24 Hour Emergency Service

**Savings Alert:** California is fighting climate change and so can you! Your bill includes a Climate Credit from a state program to cut carbon pollution while also reducing your energy costs. Find out how at EnergyUpgradeCA.org/credit.

## Account Summary

Previous Balance	\$837.04
Payment Received	- .00
Past Due Balance	\$837.04
Current Charges	+ 728.63
<b>Total Amount Due</b>	<b>\$1,565.67</b>

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

## Summary of Current Charges

(See page 2 for details)

	Billing Period	Usage	Amount(\$)
Gas	Dec 10, 2017 - Jan 10, 2018	18 Therms	24.59
Electric	Dec 10, 2017 - Jan 10, 2018	1,485 kWh	357.58
Other Charges and Credits			346.46
<b>Total Charges this Month</b>			<b>\$728.63</b>

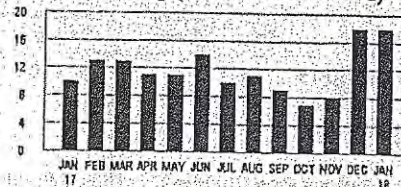
## Regulatory Notices

All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

DATE DUE ON RECEIPT

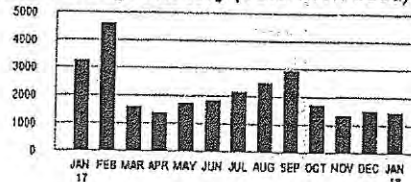
AMOUNT DUE \$1,565.67

## Gas Usage History (Total Therms used)



	Jan 17	Dec 17	Jan 18
Total Therms used	10	18	18
Daily average Therms	.3	.6	.6
Days in billing cycle	30	32	31
Change in daily average from last month			+ 0.0%
Change in daily average from last year			+ 100.0%

## Electric Usage History (Total kWh used)



	Jan 17	Dec 17	Jan 18
Total kWh used	3,266	1,517	1,485
Daily average kWh	105.4	47.4	47.9
Days in billing cycle	31	32	31
Change in daily average from last month			+ 1.1%
Change in daily average from last year			- 54.5%
Max monthly demand	11.0	6.6	3.9
Max annual demand			15.5

See Time of Use - Electricity information on page 3.

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Save Paper &  
Postage  
PAY ONLINE  
www.sdge.com

ACCOUNT NUMBER  
9185 520 600 4



A Sempra Energy utility

SERVICE ADDRESS: 6184 FEDERAL BLVD SD 92114

4723.163.3717.1933404 2 AV 0.373 oz 1.092  
DARRYL COTTON  
6176 FEDERAL BLVD  
SAN DIEGO CA 92114-1401

DATE DUE ON RECEIPT

AMOUNT DUE \$1,565.67

Please enter amount enclosed.

\$

Write account number on check and make payable to San Diego Gas & Electric.

SAN DIEGO GAS & ELECTRIC  
PO BOX 25111  
SANTA ANA CA 92799-5111

CY8

4 2 20000918552060000000728630000156567

EXHIBIT 14



DECLARATION OF DALE L. COTTON

I, Dale Lloyd Cotton, have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I am a self-employed businessman and the First Trust Deed Holder of 6176 Federal Boulevard San Diego, CA 92114; to which the title to that property is held by my son, Darryl Gerard Cotton.

2. Darryl has been under extreme financial pressure from the litigation he is involved in and he has not been making the mortgage payments to me. He has been responsible in keeping me updated through regular communication as to the status of that litigation.

3. That communication has made me very aware of the enormous stresses Darryl is undergoing both emotionally and financially.

4. To be clear: were this a normal business relationship, I would have foreclosed on this property a year ago.

5. But this is not a normal business relationship and I do want to help him and any of my children out to the fullest extent that I can. However, I am not a wealthy man, and this cannot continue.

6. I respectfully request this court to consider what the effects of this needless, protracted litigation has caused to not only Darryl, but to me as well, and please use whatever discretionary authority you have to see that justice will eventually be served in this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED:

1/21/2018

DALE LLOYD COTTON

SUPPORTING DECLARATION

MENDOTA, ILP USA  
61342



EXHIBIT 15

1 I, Darryl Gerard Cotton, hereby declare:

- 2
- 3 **1. I have personal knowledge of the facts I state below, and if I were to be called as a**
- 4 **witness, I could competently testify about what I have written in this declaration.**
- 5 2. This declaration is being prepared for this lawsuit, litigation matter and should lay out in
- 6 detail all the pertinent facts and history of me, my business and the chronological events
- 7 leading to and through the legal proceedings to date.
- 8
- 9 3. It is the intent of this declaration to prove 6 things: 1) I have had a lifelong passion and
- 10 interest in electricity and electrical designs; 2) I am a businessman, I have had numerous
- 11 companies related to electricity; 3) I also have a lifelong interest in plants and crops; 4) I am
- 12 involved in and proud of my political activism; 5) Larry Geraci is attempting to defraud me
- 13 of my property and; 6) My former counsel FTB is also likely guilty of fraud.
- 14
- 15 4. It is important to me that this reflect these issues, therefore I go to great lengths to describe
- 16 them.
- 17 5. I was born in 1960 in Peoria, Ill. My father, Dale Lloyd Cotton, was a Mechanical Engineer
- 18 who worked for the Electromotive Company (EMD) as a Process Engineer, just outside of
- 19 Chicago, Ill. My mother, Therese Marie Cotton, was a chemist who worked at various
- 20 universities. I had one brother, Gregory, and a sister, Christine, from their marriage.
- 21
- 22 6. Some of my earliest and fondest memories growing up were of having my parents take us to
- 23 their respective workplaces. At Christmas, EMD would open their entire facility up for
- 24 tours where everyone could see the factory and all the locomotives in various stages of
- 25 construction. My father would walk us around and point out where he worked and explain
- 26 his job of engineering the manufacturing processes that would produce those enormous
- 27 locomotives that were sold all over the world. Touring that factory, I saw what seemed like
- 28

- 1 an important part of what society needed in its everyday life of moving goods from one  
2 point to another. I was very proud of my dad and the work he did for EMD.
- 3 7. Since my father grew up in the farming area of Southern Illinois, at 13 years old I was given  
4 a chance to work one summer detasseling corn. It was very hard work, but I stuck with it  
5 and learned to appreciate what it takes to get these crops to harvest. Visiting my  
6 grandparents, and that summer working in the farms in Mendota, Illinois, sparked my early  
7 interest in plants and crop science.
- 8  
9 8. When my mother took me to her job, I got a chance to see the work she was doing toward  
10 her thesis in Raman Spectroscopy. This is the science that involves determining the  
11 molecular identity of an object using light. As light bombards the object, the return or  
12 reflection of that light creates a signature in frequency and wavelength that can be  
13 characterized in a nondestructive fashion by the object's unique molecular identity. I would  
14 often accompany my mother to her labs at Argonne National Labs and Northwestern  
15 University to see her equipment and experiments underway. I got to sit in with her and her  
16 colleagues when they would discuss advanced physics and particle science. Of course, these  
17 topics were well over my head, but I always made sure they at least attempted to explain  
18 what they were talking about, in terms I might be able to grasp. In deference to my mother,  
19 and because they probably enjoyed the challenge, her colleagues would usually take the time  
20 to do so and show me what the equipment was doing in their experiments. I was thrilled to  
21 understand, at least in a broad sense, what it was their work entailed.
- 22  
23 9. There is no doubt that my interest in electricity and light, came from exposure to the work  
24 my mother had been doing, and the efforts she and her colleagues made to explain to their  
25 work to me. Later in life, I would, on occasion, accompany her as she gave lectures around  
26 the world to other academics on her work, and it became increasingly evident to me, that she  
27 was respected as an innovator in her field. I could only hope that I would have an  
28



1 opportunity to contribute to the world in as meaningful a way as she had. Sadly, my mother  
2 died in 1999 but her memory and work will live on forever. It is a goal of mine to emulate  
3 her personality, and the way she affected those around her, in the same positive ways she  
4 did.

5 10. At a very young age, I found that I was really interested in politics and what was going on in  
6 the world. I even have a vague recollection of being 3 years old and sensing something was  
7 horribly wrong when the world seemed to stop with the assassination of John F.  
8 Kennedy. We all just stood there, staring at the TV, and the busy street that normally had  
9 cars flying down it, was quiet. There was no traffic. Time stood still. After that, having  
10 lived through the Vietnam war, Watergate, Nixon, Martin Luther King, and other such  
11 events, I can't recall ever not having an interest in politics and the law and their effects on  
12 the world we lived in. I found it exciting and fascinating.

13 11. My parents went through a horrible divorce when I was 13 years old. There was bitter  
14 fighting over who would get what and it led to a serious and permanent fracturing of our  
15 family. I'll never forget the tug of war and the lawyers coaching us as to what to say so we  
16 would be able to support whatever was expected to be said when we stood in front of the  
17 judge. Having to pick sides between your parents is not something that you would ever  
18 want a child to do but that is essentially what we had to do. What happened is that the boys  
19 went to my father and my sister went to my mother. Life as we knew it would never be the  
20 same.

21 12. From the time I was 13 to 15 years old, my brother and I were basically on our own. My  
22 dad worked full time, and during his off time, he sought out new relations that would rebuild  
23 our household. My brother and I resisted these new women coming into our lives, trying to  
24 assume the position that had been our mother's, so we rebelled. We did not make it easy on  
25 these women and they would leave. This, coupled with the fact we were acting like normal  
26  
27  
28

1 teenagers, caused a lot of friction with my dad. Eventually my father farmed out my  
2 brother Gregory, who was just 12 years old at the time, to a family down the street from us  
3 who agreed to take him in. I lived with my dad until I was 15 years old, when he agreed to  
4 my moving out.

5 13. In 1972 I became aware of a considerable buzz being created by then President Nixon  
6 having appointed a commission, known as the Shafer Commission, to study, compile  
7 information on, and report back to him what effects cannabis was having on our youth. It  
8 was clear to us from Nixon's statements that he did not want to see cannabis become  
9 acceptable at any level. He needed federal drug policy to make cannabis use a criminal  
10 act. Nixon saw cannabis being used by a bunch of war protesters who would sit around  
11 smoking weed and creating havoc, over him and his policies, so he needed it stamped  
12 out. He needed a way to give the federal government the tools to do that. To that end, he  
13 created the Shafer Commission, whose sole purpose he believed was to come back with  
14 findings that supported his beliefs. Nixon needed findings that would claim cannabis was  
15 evil, dangerous, and a threat to society. Unfortunately for Nixon, after an exhaustive,  
16 comprehensive, and nonpartisan analysis of the effects of cannabis, they came back with just  
17 the opposite opinion.

18 14. When the Shafer Commission came back with their report, they relied on research that had  
19 been done by UC San Francisco chemistry students who were interested in finding out why  
20 the same strain of cannabis could make one person laugh and another contemplative. They  
21 appreciated that there was the potential to use cannabis as medicine and they recommended  
22 that further research be done to see what biochemistry was at work. What they discovered  
23 was the beginning of why the science of this plant needs to be better understood. Relying on  
24 that research, and other studies from around the world, created a situation where Nixon  
25 could not accept the findings and would not release the report in the form that he had  
26  
27  
28



1 received it. Nixon ignored the Commission's recommendations and went on to create the  
2 Controlled Substances Act. He eventually resigned and was then pardoned by his  
3 replacement, Jerry Ford. One of the first things Ford did was give the Shafer Commission  
4 report to Big Pharma so that they could "continue" the research that had been done by  
5 others, while it was kept from the public for over 40 years.

6  
7 15. In 1975 I moved into my own room at a boarding house known as The Stone House. The  
8 Stone House was run by a little old lady who went by Marty. Marty was an exceptionally  
9 sweet person who had an incredible affection for birds. She had hundreds of finches in the  
10 basement and would spend hours with them. What Marty was not always very good at was  
11 noticing what her tenants were up to, and by that, I mean, more than a few of her tenants  
12 were heroin addicts, who lived there because it was cheap, and Marty loved them  
13 unconditionally, as if they were her own.

14  
15 16. When Marty first met me, she was not ready to rent a room to a 15-year-old boy but since I  
16 was personable, had a job working part time for Horton Electric, a local electrical and  
17 lighting company, and was going to high school 1 block away from the Stone House, Marty  
18 decided to take a chance and let me move into my own room. This was important, not only  
19 because I got to understand self-responsibility at a very young age, but also because it gave  
20 me the opportunity to see how those other boarders made their living and survived as  
21 adults.

22  
23 17. The Stone House was a large 3 story house and the attic floor was the most desirable of all  
24 the floors. This is where, in the evenings, the rooms would open up and there would be free  
25 flowing music, conversation, drinking, drugs (only cannabis and psilocybin for me), and  
26 discussions on everything imaginable including politics, the Vietnam war, President Nixon,  
27 relationships, and girls. People came from all over to attend these evening soirees. They  
28 were lively and fun, but they had purpose too. We were in the midst of revolt and



1 revolution. There was Kent State. There was Watergate. There was George McGovern.  
2 There was talk of impeachment. There was the Shafer Commission. There were body bags  
3 of soldiers fighting in a war that had no meaning. There were refugees. There was Jimmy  
4 Carter. There was Lieutenant Calley. There were lines of people waiting to buy  
5 gasoline. There was upheaval. I was taking it all in. Living at the Stone House taught me  
6 to think for myself, to question those who would manipulate the system on behalf of their  
7 own special interests, to help educate others, as I had been, and finally to cherish the  
8 Constitution as it is a living, breathing document that must be the center of our universe and  
9 not be taken for granted or the freedom we cherish will be lost forever. The tree of liberty  
10 will not be taken down with a single swing of the axe, but in a slow and steady process  
11 whereby one day you look up and the tree is gone. As citizens of this great country, we have  
12 a responsibility to protect ourselves and those around us from letting that happen. That is  
13 the message I took from the Stone House.  
14

15  
16 18. While Stone House helped form some of my early political ideologies, it also got me to  
17 question drugs, both legal and illegal, and the influence they had on people's lives. When  
18 the parties died down, it was always just me and the other boarders who had all taken me  
19 under their wings and mentored me. I got to see them as they really were. Even though  
20 some of them got into things that I would never try, such as heroin, I respected that they  
21 were clear to me why they did these drugs and why they would never want to see me doing  
22 them. I watched them go through the process of attaining the drugs and the rituals that went  
23 with getting the drugs into their systems. While they were certainly consumed by their  
24 addictions, they also seemed to care about the young man living in their Stone House and  
25 did not want to see me make the same mistakes they had. I respected them and their  
26 intellects. However, I saw firsthand how heroin would ravish them and ultimately, they  
27 would overdose, and some would even die. It was tough knowing that these drugs took  
28

1 control of young people who could have been assets to our world. I knew then and there  
2 that I would never subject myself to a drug, legal or not, that took over my life. Instead I  
3 would always maintain an interest in how drugs could be used to provide relief, repair or  
4 prevention of disease without the addictive elements that consumed those who took them.  
5  
6 19. After a couple of years of living in the Stone House, I had saved and was making enough  
7 money at Horton Electric to move into my own house. In 1977, at the age of 17, I kissed  
8 Marty goodbye, thanked her for everything she had done for me, and moved into my own  
9 house.  
10  
11 20. At the time I rented my own house, I had been working part time for Horton Electric for  
12 almost 3 years. I initially started out working in the warehouse stocking inventory but, since  
13 I was always interested in what those electrical parts did, I'd ask a lot of questions of those  
14 who worked there. That got me to understand the business to the point that, at just 16 years  
15 old, I got to move up to the electrical sales desk. In that capacity, I got to meet with  
16 customers, helped fill orders and realized that building and wiring things was incredibly  
17 rewarding.  
18  
19 21. While I appreciated the opportunity to work in electrical sales, I lobbied hard to get  
20 transferred to the electrical construction side of the company. I had already been dreaming  
21 of someday becoming an electrical contractor. The contracting side of Horton Electric was  
22 run by a surly old Irishman by the name of Chris who wanted nothing to do with having a  
23 young kid working around him and his electricians, but I didn't give up and I eventually got  
24 on his good side. Once I did, it was the best thing that could have happened to me. I got  
25 direction. I got focus. This shop was well established and serviced all the surrounding  
26 area. Chris was very well respected, and by me representing him, by way of delivering  
27 materials and getting to know the union electricians, I had an opportunity to see how the  
28 electrical construction side of the business operated. I'm a quick study but there was no way



1 that, without formal training, I was going to learn the electrical contracting trade unless I got  
2 a break. That break came when one of the union electricians I was working with decided  
3 that I was worthy of baptism by fire. As much as Chris got to know and rely on me, he  
4 knew that my heart was in becoming an electrician and one day running my own business,  
5 so he got me onto a union job that needed more electricians than the hall had available at the  
6 time. I was given an opportunity to become a walk-on electrician for a huge condominium  
7 project being built outside Chicago. While I had some experience in bending conduit and  
8 running wire, I was not up to the skill levels that were required to maintain that job. I was  
9 not going to lose that job, so I would actually stay after hours to practice bending conduit to  
10 improve my production levels. When the project foreman found out I was doing that, he  
11 was not happy about it, and told me in no uncertain terms that, if I ever did anything off the  
12 clock, I would be terminated. However, he liked that I wanted to succeed and paired me with  
13 another walk-on electrician who was so good he was out-producing the union electricians by  
14 nearly twice the production per day. John was good. Very good. He had methods and  
15 techniques that allowed him alone to finish a one-bedroom condominium, completely piped  
16 in conduit and ready for drywall, in one day. I worked with John and learned every  
17 technique he had. Within a month, I was knocking out the same production levels he  
18 was. John went on to become a union electrician and stayed in Chicago. I could have gone  
19 that route too, but I wanted to eventually have my own business as I had seen Chris do at  
20 Horton Electric and, since the winters were brutal in Chicago and I had nothing keeping me  
21 in the Midwest, I decided to take my skill sets and move to a warmer year round climate. It  
22 was in 1980 that I made the decision to pack all my belongings up in a van and move to San  
23 Diego.

24  
25  
26  
27 22. When I arrived in San Diego, I immediately got a job for the U.S. Navy working as an  
28 electrician in the Public Works Center (PWC). While this was considered a temporary



1 position, my electrical skills and acumen put me in demand among the career, civil service  
2 electricians and allowed me to travel to many of the Southern CA naval bases while working  
3 on, and often being given a supervisory role in, some of the most sensitive and high-profile  
4 projects going at the time.

5 23. I had been working for PWC for 2 years when, in 1982, I was given an opportunity to make  
6 better money as the Electrical Superintendent for Dave Baker of Westland Electric. In this  
7 capacity, I would be responsible for running multiple large commercial projects. Dave hired  
8 me for this position because he knew, from people he knew at PWC, that I was  
9 knowledgeable, organized, liaisoned well with our customers, and delegated authority,  
10 which resulted in my projects being completed on time and on budget.

11 24. In 1983, I met Debra Holly and we started dating. We never married but stayed together for  
12 14 years, during which time we had 2 beautiful daughters, Kimberly and Kristina. It was  
13 during those early years that Debra encouraged me to follow my dreams of owning and  
14 operating my own electrical contracting firm.

15 25. In late 1985, I started suffering from occasional nocturnal epileptic seizures. While it is  
16 unknown as to what exactly is responsible for these seizures, it is believed that lack of sleep  
17 and stress are significant contributing factors. I was originally prescribed Dilantin which  
18 worked but was known to cause problems within the liver and, since I also have the  
19 Hepatitis C virus, I was very concerned about the effects a prescription drug would have on  
20 my liver.

21 26. In 1987 I made the decision to start my own electrical contracting business and Fleet  
22 Electric, CA License Number 514234, began business out of my home in North Park. I  
23 managed to run and grow that business so that I needed to move into a larger space. In 1992  
24 I moved our business out of my home and into a commercial rental property at 6184 Federal  
25 Blvd, which I currently maintain for my business.

1 27. In 1996 I first became aware of Dennis Peron as he was getting attention as one of the  
2 original co-authors of Prop 215, which, with its passage, had made cannabis legal in CA for  
3 treating certain medical conditions. While at the time I was uncertain as to how effective  
4 cannabis might be in the treatment of my seizures, I did appreciate that it was now being  
5 recognized as a possible alternative option to the prescription drugs I was taking. I resolved  
6 to follow the research that developed relative to the genetics and dosing levels that could be  
7 relied on to help combat these seizures.  
8

9 28. In 1997, the owner of the property at 6176 Federal Blvd contacted me and asked if I would  
10 be interested in acquiring his property, which is adjacent to mine, at 6184 Federal Blvd, if  
11 the terms were favorable. This was a deal that worked for both of us and I purchased the  
12 6176 Federal Blvd property in my name.  
13

14 29. In 2000 I expanded my license to include a General Contracting classification and was  
15 issued CA Contractors license number 757758. Since the new license allowed us to do work  
16 beyond just electrical, I renamed the company Fleet Services and proceeded to operate under  
17 that license until 11/30/2012 when I decided I would cease contracting and devote my full  
18 attention to my efforts in energy efficient horticultural lighting and controls.  
19

20 30. In 2002 I started Fleet Systems as a compliment to my Fleet Services contracting  
21 business. Fleet Systems provided emergency and backup power generation for both  
22 permanent and rental power applications. Fleet Systems became dealers and authorized  
23 service centers for many major brands including Kohler, Baldor, and Cummins. Within 4  
24 years of our startup; our Fleet Systems Maintenance Contracts Division had acquired a  
25 majority of the major key accounts such as hospitals, casinos, office buildings, and hotels in  
26 San Diego whereby the annual generator service contracts were an integral part of our  
27 portfolio. Recognizing this, the local Kohler Distributor, Bay City Electric Works, made an  
28 offer to purchase Fleet Systems and I accepted their offer. It was agreed that we would



1 retain the Fleet Systems name so that we could continue to provide mobile power systems  
2 service on news vans, semi-trucks and RV systems, services that we still provide.

3 31. In 2005 I expanded our generator equipment business into Mexico with the opening of Fleet  
4 Systems de Mexico. This was good timing for us because at the time we opened our facility  
5 in Ensenada, MX there were sizeable rentals and sales contracts available. In addition,  
6 many of our US manufacturers whose power systems we were already servicing had  
7 maquiladora operations in this region which made it relatively easy to support them with  
8 equipment and personnel from our San Diego facility. With the sale of Fleet Systems in  
9 2007 we ceased operations in Mexico.

10  
11 32. In 2010 I started Inda-Gro as an induction plant lighting manufacturer. Inda-Gro was one of  
12 the very first companies to identify induction lighting as a viable, energy-efficient plant  
13 lighting technology that could compete with the existing HID lighting technology that  
14 dominated the plant lighting market.

15  
16 33. It is through the ongoing research I have done at Inda-Gro that we have seen significant  
17 developments in plant photobiology with self-published and other researchers' papers.

18 34. From 2010 onward I worked primarily on the manufacturing and distribution side of Inda-  
19 Gro lights. Since our products relied on a well-established Tesla Coil technology which was  
20 being applied in a new way to provide lighting for plants, it required that growers be  
21 convinced that our products could deliver the crop quality and yields to which they had  
22 become accustomed under HID lighting systems. The only way that was going to happen  
23 with a new technology was if we had "partner growers" who would provide meaningful data  
24 as to their comparative results or if we had our own farm running continuously that would  
25 allow for people to see the plants and lighting systems in operation. Couple those visits with  
26 time/date stamped images posted on Facebook of previous grows and crop results and the  
27  
28



1 consumer now has the ability to make an informed decision as to what Inda-Gro brings to  
2 the market.

3 35. My experiences with having "partner growers" providing me with any reliable, meaningful  
4 data was a challenge. More often than not, they would take one of my lights with the  
5 promise that they would tell me how it performed. The majority of the time I would get  
6 little to nothing back in return. Clearly this did not work for me and my plans to improve  
7 our products by tracking real time plant performance values.  
8

9 36. In 2011 I decided to no longer rely on "partner growers" as the design developments  
10 required more reliable feedback in a timely fashion and I began to focus entirely on our  
11 inhouse T&D garden operations for indoor and greenhouse lighting applications. It was at  
12 this time I started both Youtube and Facebook channels to publish our work with time/date  
13 stamped images and videos.  
14

15 37. In 2012, in addition to the lighting and controls research and development underway, I was  
16 given the opportunity to procure several different genetics of cannabis that I wanted to grow  
17 for the treatment of my seizures. It was during this time that I became very interested in  
18 combining the engineering work we were doing with our Inda-Gro products with the plant  
19 sciences to generate organically grown cannabis products that would not only be healthier  
20 but, by combining certain genetics, prove to be better at combating my seizure disorder.  
21

22 38. Aquaponics is not widely used in cannabis cultivation. However, I was attracted to this  
23 method of cultivation because of the organic nature under which the plants had to be  
24 grown. Nothing could be placed on the plants that could harm the fish. This appealed to me  
25 since, if I were to continue to use cannabis in combination with prescription drugs to treat  
26 my seizures, I wanted to be sure that the cannabis I consumed was free of any potentially  
27 toxic elements. A balanced aquaponic system relies on healthy fish and their waste being  
28

1 the primary nutrients for the plants. This is a presentation I developed that goes into detail  
2 as to how this method of cultivation may be employed for cannabis crop cultivation.

3 39. I experimented with several methods that would allow aquaponics to be used in cannabis  
4 cultivation and found a reliable technique that gave the cannabis plants their main nutrient  
5 requirements from the flood and drain fish water but which also allowed us to top feed the  
6 trace minerals that cannabis and other flowering plants need in a top water feed that does not  
7 water to the point that water combines with the fish water. This practice is referred to as  
8 decoupled or dual root zone feeding for the plants.

9  
10 40. As a result of my posting this work on Facebook media I eventually came to the attention of  
11 Pentair Aquaponic Eco-Systems. PentairAES is the largest manufacturer of aquaculture  
12 products in the world. It was Dr. Huy Tran, PhD, the Director of Research for Pentair at the  
13 time, who reached out to me to learn more about us and our products and to explore if  
14 induction grow lights would be a good fit for the industry and their product line. After  
15 discussing the science involved in our products and learning more about us, Dr. Tran  
16 decided to recommend our induction lights be used in the Pentair product line under their  
17 own label. His recommendations were accepted by management and I began filling  
18 induction grow light orders for PentairAES.

19  
20 41. After entering into that agreement with PentairAES, I expanded sales of our induction grow  
21 lights but I also benefited from the incredible insight and knowledge that Dr. Tran and other  
22 advanced academics within Pentair, such as Dr. Jason Danaher, have been able to provide  
23 me with in regard to how aquaponics can grow a wide range of crops in a wide range of  
24 environments while using 5-10% of the water that a traditional soil crop would consume. I  
25 also was pleased to discover from the research we were doing into plant lighting and  
26 aquaculture that the benefits we found in organically grown food crops quality extended to  
27 cannabis crop quality.  
28



1 42. Cannabis that I had been acquiring through local retail cannabis dispensaries would not  
2 always be guaranteed to be free of contaminant pesticides, fungicides, aerocides or even  
3 nutrients. When I would procure concentrates of the same genetics for my condition, the  
4 percentage of residual solvent elements would be increased by 10-20X what it would have  
5 been in flower form. While I want the benefits of medical grade cannabis to combat my  
6 seizure disorder, I refuse to take in chemicals that I know to be unhealthy and even life  
7 threatening.  
8

9 43. In March 2015 I found a commercial property available for rent in the Barrio Logan section  
10 of San Diego. The landlord understood that I was to rent this property for the purposes of  
11 developing what I began referring to as a 151 Farm. The concept, which originally began  
12 with our R&D work on Federal Blvd, was that urban farms would grow 1 pound of cannabis  
13 to 5 pounds of food for 1 community. I went forward with the Barrio Logan project  
14 because it afforded us a larger footprint than I had available at the Federal Blvd  
15 property. The size of this property allowed us to have indoor, greenhouse and outdoor  
16 plants that were grown in a soilless aquaponic system of recirculating water. In our trials of  
17 systems and procedures I grew lettuce, hops, peppers and medical cannabis. I maintained  
18 our progress on social media with time/date stamped photos and welcomed those who had  
19 an interest in our work to visit us for tours.  
20

21 44. While I initially sought out others in the hydroponics industry to co-develop the 151 Barrio  
22 Logan project, it became apparent that, even though they may have endorsed the efforts,  
23 they were never willing to contribute any time or money to see that the project was  
24 maintained. While I consider Barrio Logan a success, ultimately the work and money  
25 involved to maintain it became too much to bear and I had to shut it down and return those  
26 operations to the 6176 Federal Blvd location where it continues to operate to this day.  
27  
28



1 45. Over the years I became increasingly aware of all the research being done in other countries  
2 on the medical benefits of cannabis. I watched with great interest as medical doctors and  
3 scientists from every realm of the sciences collaborated in finding out more about this plant  
4 and how it interacts with our endocannabinoid systems. What this ongoing research has  
5 shown is that at the botanical level there are mysteries about this plant and its broad  
6 phenotype expressions that exist amongst the wide-ranging genetics that will combine to  
7 promote homeostasis or a balancing of the mind/body relationship.  
8

9 46. Other elements of the plant have been clinically proven to reduce blood flow to cancer cells.  
10 Today there exists greater empirical evidence than ever before as to how this plant can  
11 benefit us and why its cultivation and access need to be sensibly managed. Based on my  
12 personal experiences, that of those I've seen benefit from this plant and the research that  
13 supports its medical use, I will remain committed to lending my voice to see that laws and  
14 policies are in place at the federal level which would include the re/declassification of  
15 cannabis and that at the local and state levels those who need access to this plant for their  
16 medical conditions are able to do so.  
17

18 47. In late 2015 I was contacted by researchers at the National Algae Association who had seen  
19 my work whereby I had taken one of our induction grow lamps and designed a waterproof  
20 housing that allowed the lamp to be put underwater without any type of housing over  
21 it. This put the lamp's energy, intensity and spectrums at depths in the tank where it is  
22 difficult for light to travel at distance to meet with the macroalgae being grown.  
23

24 48. The particular algae we were interested in cultivating with our lamps was the  
25 Haematococcus Pluvialis algae or "HP" for short. HP is known to be very high in the super  
26 antioxidant astaxanthin. Research indicated that by installing the lamps in the tank we  
27 would be able to increase the concentration levels of astaxanthin and decrease times to  
28

- 1 harvest. From my perspective, anything I could do to help improve any crop production  
2 value which, when extracted, would benefit the patient, was worthy of pursuit.
- 3 49. Because of my work on the AquaPAR submersible induction lamps to decrease times to  
4 harvest and increase HP concentration levels, I was invited to give a presentation at The  
5 National Algae Convention.
- 6 50. One of my greatest personal motivations in starting my own 151 Farms Urban Aquaponics  
7 Gardens was that I could gain personal knowledge by creating these gardens and learn what  
8 would and would not work when growing a wide variety of food and plant-based medicines  
9 in this fashion as well as develop our lighting and control products.
- 10 51. The reason this work at this particular time was especially appealing to me is that botanical  
11 plant substances can help alleviate certain medical conditions in patients when combined  
12 with the ability to optimize crop production values in a given area using controlled  
13 environmental conditions whereby the plants can develop in the lowest times to harvest  
14 across all plant species.
- 15 52. When optimizing plant production values, what matters most is that the research supports  
16 whatever the benefits to the patients may be based on control factors such as the plant  
17 genetics, the type of cultivation systems and procedures being used that allows for  
18 organically grown plant-based products to be grown in a repeatable fashion. It is for this  
19 reason I began to introduce a wider variety of crops, known for treating medical conditions,  
20 into our 151 Farms so they could be available to those who would seek them out in their  
21 fresh unadulterated form from their local garden. Other factors that contributed to my  
22 support for and development of 151 Farms included; The ability to co-cultivate fish and  
23 plants in a **soilless** urban garden setting.
- 24  
25  
26  
27  
28



1 53. There is an opiate epidemic in the United States which has now reached epic  
2 proportions. The need for fresh, organically grown, unprocessed foods and plant-based  
3 medicine has never been greater.

4 54. A whole host of medical conditions, such as high blood pressure, diabetes, Alzheimer's,  
5 obesity, and cancer, can be directly attributed to the consumption of processed foods.

6 55. The availability of fresh unprocessed foods is severely restricted in urban settings. This  
7 leads more people to purchase food products that have longer shelf lives from the stores in  
8 their neighborhoods. Consequently, the percentage of diet-related diseases is  
9 disproportionately higher in regions where access to unprocessed food is limited.

10 56. Why is having locally-sourced, organically grown medical cannabis plant genetics so  
11 important to patients? Research has shown improved efficacy from the EXTRACTION of  
12 essential oils from cannabis plants when that extraction is done from a just harvested  
13 plant. This extraction process is referred to as a live resin extraction. A cultivation process  
14 whereby the just harvested plant can be converted into that essential oil is critical to the  
15 finished product quality. What is equally important is that the plants are grown in a  
16 controlled environment whereby the full phenotype expression can occur. This is a function  
17 of broad spectrum lighting. It's also important that the plant genetics are known and stable  
18 to realize these benefits in a repeatable process. Finally, it is important that the plants have  
19 not been subject to pesticides, aerocides, fungicides or residual nutrients that may contain  
20 heavy metals or plant growth regulators which in an extracted process could be 10-20X what  
21 those levels would be in a flower form. Cannabis grown and processed in this way allows  
22 the patient to take lower doses that, when coupled with diet and some form of exercise  
23 incorporated into a daily regimen, help to, at a minimum, improve their quality of life and  
24 reduce or even eliminate the medical conditions that existed prior to their introduction to  
25 naturopathic treatments. The benefits of a 151 Farm are that the source plant material for  
26  
27  
28

1 medical grade cannabis can be made available to those within the community nearest to  
2 where it has been grown.

3 57. If you're familiar with the term Community Supported Agriculture (CSA), a 151 Farm  
4 utilizes Cannabis Supported Community Agriculture (CSCA) as a way to pay it forward  
5 within our communities by providing housing and jobs for all skill levels and donating a  
6 portion of the food being grown to local food banks.

7  
8 58. The negative impact that our drug laws and policies have had in non-white communities has  
9 been disproportionately larger than for those who live in predominantly white  
10 communities. These drug policies have led to higher percentages of incarceration, lost jobs,  
11 crime and other negative effects for those individuals and their communities.

12 59. With the increased opportunities coming from the mainstream and legalization of cannabis  
13 within these communities, it is morally imperative that under these new laws, cannabis  
14 related business opportunities be given to those who have been most affected by those  
15 previous drug policies and laws. 151 Farms provides a distinct and transparent pathway for  
16 those opportunities.

17  
18 60. It is necessary to meet with government officials and interact with them on a regular basis to  
19 see that organic urban farming and medical cannabis patient's needs are being considered.  
20 Letting your voice be heard, not being passive, leading by example, and being part of the  
21 dialogue to be part of the solution are all parts of what being a 151 Farmer means when it  
22 comes to exacting change in an ever-changing industry.

23  
24 61. For me personally, knowing that I am able to grow my own medical grade cannabis with  
25 particular genetics that help to prevent my seizures is comforting, but I would also like to  
26 know that I can purchase medical grade cannabis which is free of toxic elements, should I  
27 become unable to grow in the future. This got me looking into how the State of CA  
28 regulates pesticides and toxicity limits on medical cannabis products that are cultivated and



1 produced under the authority of Prop 215. What I found is that as far as the State of CA is  
2 concerned, since 1996, when Prop 215 was passed, there have never been any limits on  
3 pesticides and toxicity because the California Department of Pesticide Regulations (CDPR)  
4 got their limits from those established by the FDA and EPA. The problem CDPR had with  
5 setting state levels was that it relied on a federal agency to provide data and NO federal  
6 agencies will perform the pesticide and toxicity studies on a product that is listed as a  
7 Schedule One drug. Under the Controlled Substance Act cannabis is seen as having NO  
8 medicinal value whatsoever, it is subject to severe safety measures and it is listed as having  
9 a higher potential for abuse than heroin, which is listed as a less dangerous, schedule two  
10 drug.  
11

12 62. With one side blaming the other and me as the medical cannabis patient caught in the  
13 middle, I began researching why the federal government still considered cannabis as having  
14 NO medicinal value. What I found that seriously contradicted that position was that in 2003  
15 the Department of Health and Human Services was granted patent number US 6,630,507 B1  
16 which cites the antioxidant and neuroprotective benefits of cannabinoids which are to be  
17 derived from cannabis.  
18

19 63. If, after reviewing this patent, there is still any doubt in your mind as to what research  
20 supports it and the benefits of cannabis, I would encourage you to look at the 'other  
21 publications' as listed in the upper right-hand portion of the patent. Here you will see the  
22 studies from accredited scientists and institutions that from 1965 to 1981 have done their  
23 own research to support this singular patent issued in 2003 and the benefits that this plant  
24 represents to the medical patient. Yet today, 15 years later, cannabis remains a Schedule  
25 One drug. The federal government's scheduling hypocrisy regarding cannabis as having NO  
26 medicinal value is astounding!  
27  
28

1 64. As a medical cannabis patient myself and having lived for 2 years in the Stone House where  
2 I saw firsthand the ravages of heroin, I simply cannot understand the hypocrisy between  
3 these two positions. It is one of the reasons I have been so vocal about trying to enact  
4 common sense laws and regulations as to how cannabis is grown and how it can be accessed  
5 by those who require it medically.  
6

7 65. Another area of great concern to me is why any state government would not have  
8 established pesticide and toxicity levels of substances that may come in contact with  
9 cannabis before they allow the sale of cannabis products within that state. For food and  
10 drugs other than cannabis, these levels are typically established by the federal government  
11 but since cannabis is listed as a federal schedule one substance, the California Department of  
12 Pesticide Regulation, which would normally set these limits, has had a hands-off policy for  
13 setting these limits, citing lack of federal direction.  
14

15 66. With the passing of Prop 215 in 1996, California has had 20 years to set pesticide and  
16 toxicity limits on cannabis grown in state and never provided those limits to the cultivators  
17 or to the medical cannabis patients. It was left up to the consumer to decide if they were  
18 comfortable with the amount of heavy metals and other potentially toxic substances that  
19 could be found in the plant materials and if they were willing to consume that product. Even  
20 though it is necessary that there be established limits that require that the testing of that  
21 product and the information regarding what was in that product be made available to the  
22 consumer, more often than not those test results were not available, and the medical  
23 cannabis patient was left to chance what was in the plant material they were ingesting. With  
24 recent tests showing that over 84% of the cannabis being tested has tested positive for what  
25 are considered harmful levels of pesticides, the fact that the State of CA has left this  
26 responsibility to the medical cannabis patient consumer for the last 20 years is  
27 unconscionable.  
28



1 67. With the passing of Proposition 64, "The Control, Regulate and Tax the Adult Use of  
2 Marijuana Act" (AUMA) the state has now accepted their responsibility to set these  
3 limits. However, the limits have not yet been set and are expected to be released at some  
4 point in the near future.

5 68. With the passing of AUMA nothing has changed in the federal scheduling of cannabis. It's  
6 still Schedule One. Why has the state agreed to establish these guidelines now when they  
7 were unwilling or unable to set them in protection of the medical cannabis patient before the  
8 passage of AUMA? It's simple. The state never took their responsibilities to the medical  
9 cannabis patient seriously under Prop 215 since it did not increase revenue for them.  
10

11 69. I felt strongly then and still feel today that, while Prop 215 was certainly not perfect, it could  
12 have been improved upon if the legislature had seen fit to do so. The legislature failed the  
13 medical cannabis patient and now they are in charge of a regulatory system that is supposed  
14 to be responsible and equitable to the medical and so called "recreational" cannabis  
15 communities. To say I have my doubts as to how they will manage this on behalf of the  
16 medical cannabis patient would be, to put it mildly, a massive understatement.  
17

18 70. I have always had a hard time accepting, and have staunchly opposed, any laws or  
19 regulations that purport that cannabis can be structured for "recreational" use. It is my belief  
20 that has been proven to be the case in Washington, Oregon and Colorado that when  
21 "recreational" laws are introduced the medical cannabis patient's rights are infringed upon  
22 as the non-profit medical cannabis industry virtually disappears while everyone chases the  
23 for-profit "recreational" market.  
24

25 71. When these so called "recreational" laws are passed they attempt to equate cannabis to other  
26 "recreational" drugs such as alcohol or tobacco. Because of that, I stand opposed to a  
27 recreational classification for cannabis since both alcohol and tobacco have proven to be  
28 cancer causing, lead to addiction and cause death. Cannabis, in any of its forms, has none of

1 these deleterious effects. As cited in the DEA 2017 Drugs of Abuse (page 75) there has  
2 never been a reported case where someone has died or suffered permanent harm from the  
3 effects of cannabis. The same cannot be said of alcohol or tobacco.

4 72. In or around March of 2016 I became aware that an initiative, Proposition 64, The Control,  
5 Regulate and Tax the Adult Use of Marijuana Act (AUMA) had made the California 2016  
6 ballot. With the passage of AUMA, cannabis would be made available in CA in a  
7 "recreational" form to anyone over the age of 21 who wishes to purchase it without the need  
8 of a physician's recommendation.  
9

10 73. Over the course of the next couple of months I read this initiative and considered what it's  
11 passing would mean for the cannabis market in general and the medical cannabis patient in  
12 particular. I regularly watched and participated in online debates on the merits of AUMA  
13 and found my position to oppose the passing of AUMA only being reinforced as I learned  
14 more about how the general public saw AUMA in a positive light without having an in  
15 depth understanding of what its passage would mean to those who would be most impacted  
16 by it: medical cannabis patients.  
17

18 74. Since AUMA was a long and complex initiative, one that the average reader found to be  
19 confusing and difficult to read through in its entirety, I took the initiative to create a  
20 condensed version that included a Table of Contents, a link to the Proposition in its original  
21 form and comments that invited discussion as to the purposes that were specifically included  
22 in the Proposition. I then posted that AUMA analysis on the 151 Farmers website, which  
23 was created to explain our ideologies and act as an archive for the papers and research that  
24 help propel forward the need for urban gardens and how cannabis and those laws that affect  
25 cannabis are an important element in those farms' success.  
26

27 75. From that AUMA analysis I began a campaign that included interviews and numerous social  
28 media posts on behalf of myself and others and conducted seminars as to what the passing of



1 AUMA would mean to the medical cannabis patient. Within these presentations and posts I  
2 would always reference the AUMA analysis and a certain section of the initiative that was to  
3 be voted on.

4 76. I used social media and the AUMA analysis to create not only discussions about the specific  
5 elements within AUMA but also what organizations endorsed it and why they chose to do  
6 so. One organization that supported the passing of AUMA was the California Medical  
7 Association (CMA). With its 41,000 physician members, the CMA has never supported  
8 cannabis for any medical purposes, but they were endorsing AUMA for "recreational"  
9 purposes. I found that position to be hypocritical by pointing out the following: 1) The  
10 CMA never endorsed cannabis for its possible benefits as a drug to be used for certain  
11 medical conditions; 2) The CMA has never been on record supporting research on how  
12 cannabis could be used to treat certain medical conditions; 3) Has the CMA endorsed laws  
13 that make other recreational drugs legally available to those over 21 years of age? Of course  
14 not. I believe that the CMA and other likeminded organizations will endorse any cannabis  
15 law that minimizes the benefits of cannabis for medical use and which allows the states to  
16 construct laws that tax and regulate cannabis in a recreational form so that it does not  
17 compete with pharmaceutical drugs.

18 77. Once I had a better understanding of AUMA I felt compelled to reach as wide an audience  
19 as possible to express my concerns. While I was already reaching a fairly large audience  
20 with my posts, seminars and press conferences, it was somewhat limited to a core group who  
21 already followed me. If I wanted to reach a much larger audience I needed to get the  
22 support of those who had a much larger following. I did that with a campaign that included  
23 radio, tv, press conferences, seminars and an outreach to cannabis activists who had their  
24 own followings.

1 78. In September 2016 I reached out to Dennis Peron to introduce myself. Over the course of  
2 various phone and text messages we shared our concerns over what the passage of AUMA  
3 may mean to the medical cannabis patients' rights which were granted to them under Prop  
4 215.

5 79. Dennis and I both agreed that should AUMA pass, those medical cannabis patients' rights  
6 that had previously been made available to them under Prop 215 were likely to be eroded  
7 and infringed upon as we have seen happen in other states where recreational cannabis was  
8 added to what had previously been strictly medical cannabis. Dennis and I agreed to  
9 collaborate to the extent we would try to educate the voters as to what the details within  
10 AUMA would mean to the medical cannabis patient should it pass.  
11

12 80. In October 2016, Dennis Peron, with the help of friends, was able to travel from his home in  
13 San Francisco and visit our 151 Farm here in San Diego. While Dennis was here we invited  
14 other activists to visit our farm and meet him to discuss how we all might help in his efforts  
15 to protect the patients' rights that had been granted under Prop 215.  
16

17 81. During that visit, Dennis gave me access to his personal Facebook page where I began  
18 presenting elements of AUMA on his behalf, daily or every other day, that came directly  
19 from the Prop 64 language. Those posts ended up creating a lot of debate and discussion  
20 among those who followed Dennis's page. At the time we could only hope they would  
21 seriously consider what they would be getting if AUMA passed.  
22

23 82. Also during that visit, Dennis and I were invited to be interviewed for a radio show on our  
24 mutually declared positions as to the threats that the passing of AUMA would represent to  
25 the medical cannabis patients' rights granted under Prop 215. We agreed and those  
26 interviews were done in Irvine, CA and sponsored by WeedMaps for SpeakEasy radio.

27 83. In addition to my work on social media, I also kept up the 151 Farms website which is  
28 where I created a paper, in collaboration with Dennis Peron and other likeminded activists,



1 that addressed how, with the passing of AUMA, the medical cannabis patients' rights which  
2 had been granted under Prop 215, would most likely be lost. With the posting of this paper  
3 just prior to the November 8, 2016 elections, we stated why cannabis could never be  
4 considered "recreational" and it was subsequently released to a wide audience through  
5 numerous social media platforms.

6  
7 84. In November 2016 California voters approved Proposition 64, the Adult Use of Marijuana  
8 Act, as a way to make cannabis available to anyone over the age of 21 for recreational  
9 purposes. Under AUMA, the state will incorporate the medical cannabis patients' rights and  
10 access to medical grade cannabis within a regulatory structure that will "streamline" (their  
11 words) recreational and medical cannabis licensing beginning January 1, 2018.

12 85. Under AUMA the state has been given the right to modify the original voter approved  
13 proposition with a  $\frac{2}{3}$  majority vote of the house. This is the first time that a voter approved  
14 initiative has given the state the right to change it without another initiative to replace it. I  
15 find this to be a slippery-slope whereby, for example, the  $\frac{2}{3}$  majority might someday just  
16 vote that a simple majority can carry a change in the law. I seriously doubt the  
17 constitutionality of any initiative that undermines this most basic tenet of voter approved  
18 Initiatives.

19  
20 86. With the passing of AUMA we shall see what its effect will be on the medical cannabis  
21 patient. I stand prepared to exercise any and all of my constitutional rights in seeking  
22 protection for those medical cannabis patients, cultivators and processors who have been  
23 harmed should AUMA not take into account their unique needs and circumstances. From a  
24 medical cannabis patient's perspective these are the questions I feel need to be asked: 1)  
25 Will the passing of AUMA have a negative impact on patients' rights to cannabis?; 2) Will  
26 it affect the availability of medical grade cannabis?; 3) Will the price of cannabis go up to  
27 where it is now unaffordable for the medical cannabis patient?; 4) Will the opportunities to  
28

1 continue research and development of cannabis genetics for specific medical conditions be  
2 limited to only those who would qualify under a for-profit regulatory framework controlled  
3 by a state government that has historically taken a laissez-faire attitude toward cannabis and  
4 its use for medical purposes?

5 87. Under AUMA, has the state given voice to a medical cannabis association that can speak on  
6 behalf of those who are representative of that group of cannabis buyers that is distinctly  
7 different from those that would purchase for recreational reasons? If so, who are they?  
8

9 88. Since 2015, the 151 Farms at 6176 Federal Blvd has had many people from very diverse  
10 backgrounds come tour our operations. I have always treated these visitors as Friends of the  
11 Farm and hope to inspire them once they have seen what we represent.

12 89. If a Friend of the Farm is interested in visiting us on more than one occasion, they become a  
13 151 Ambassador. That is, they can lead their own tour groups and help spread the word  
14 about what we do here. These relationships have spawned some remarkable personal  
15 connections that have continued to bring attention to our cause.  
16

17 90. The list of 151 Ambassadors has grown. Over the years we have welcomed a large and  
18 diverse range of people to our farm who have come from all over the world. Our motto is:  
19 We Need More Gardens Not Less. Come Visit Us! Leave your Bias at the Gate and I  
20 Promise You Will Learn Something!

21 91. With that message we have seen politicians, members of the media, medical doctors,  
22 researchers, judges, lawyers, entrepreneurs, veterans, law enforcement, activists, teachers,  
23 students, policy makers, community leaders and more. It seems that people identify with  
24 community and appreciate a place where they can come together and feel like they can  
25 contribute and make a difference. If they have something tangible to wrap their heads  
26 around that includes a roadmap that allows them to recreate what they've seen, the  
27 possibilities are endless. At 151 Farms that has been my goal and it all starts with a plant.  
28



1 92. We have had such a huge diversity of talented and motivated people come visit our farm and  
2 go on to become 151 Ambassadors that there are simply too many to list. Here are 3  
3 noteworthy 151 Ambassadors that, due to their dedication and commitment, I would like to  
4 present as representatives of our cause:

- 5 a. Coach Don Casey, former NBA Coach and currently serving as the National  
6 Trustee Board Member for the ALS Foundation. Coach Casey has been  
7 instrumental in seeing that ALS patients who seek medical cannabis  
8 understand that many doctors support the use of cannabis as a way to  
9 improve their quality of life. I developed The Casey Cut in honor of Coach  
10 Casey as a tribute to his many years of work on behalf of ALS patients.  
11  
12 b. Ms. Linda Davis, Americans for Safe Access, in her tireless efforts to bring  
13 medical cannabis patients the 151 Farms message of how important it is to  
14 have organically grown, pesticide free cannabis to treat their medical  
15 conditions.  
16  
17 c. Sgt. Sean Major, former Marine Corps servicemember, who came to 151  
18 Farms as the only active duty military member in the entire Department of  
19 Defense who has ever been given the authorization to treat combat related  
20 brain injuries by cultivating cannabis. Having grown cannabis prior to  
21 enlisting in the Marine Corps, Sean believed that the psychological issues he  
22 was having as a result of his tours in Afghanistan could be managed if he  
23 were allowed to cultivate cannabis while gaining accreditation from a school  
24 that taught cannabis cultivation as a post military career opportunity. Sean  
25 has continued to work tirelessly on behalf of veterans who suffer from  
26 combat related injuries so that they might have access to medical grade  
27 cannabis to treat their conditions.  
28

1 93. In July 2015, Mr. Ramiz Audish came to our offices at Inda-Gro and asked if he could take a  
2 tour of our farm. Ramiz, who preferred to be called Ray, was a well-spoken, clean cut  
3 young man who had heard about what we were doing and wanted to see the operations for  
4 himself. Ray was quite complimentary of everything we were doing with both Inda-Gro and  
5 151 Farms and suggested some ideas to improve our operations. I was interested in hearing  
6 what he had to say.  
7

8 94. Ray first asked under what authority I was growing the cannabis on our site. I pointed him  
9 to the Physician's Recommendations I had posted for those personal medical cannabis needs  
10 as established under Proposition 215 and SB 420 guidelines.

11 95. I told Ray that in addition to the posted Physician's Recommendations, we had recently  
12 completed a cannabis cultivation application with the Outliers Collective, a duly licensed  
13 collective located in El Cajon, CA. In that process the owners of Outliers and two Sheriff's  
14 Deputies who specialize in cannabis compliance came out to our farm. I gave them a tour of  
15 our operations and, while they complimented the quality and organic nature of our cannabis,  
16 they told us they could not certify us as an approved vendor for Outliers since the City of  
17 San Diego would not grant a license for cannabis plant counts that would allow us to grow  
18 commercially at our location. With that, we were denied approved vendor status with  
19 Outliers Collective. Both Outliers and I were very disappointed, but I did feel better when,  
20 after having toured our facility, the Sheriff's Deputies told me that I was operating within  
21 Prop 215 and SB 420 guidelines.  
22

23 96. Confident that I was meeting the letter of the law as a cannabis cultivator, Ray said that he  
24 felt the only other thing I lacked was a medical marijuana consumer collective (MMCC) or  
25 retail dispensary at this location. Ray told me that he had experience in owning and running  
26 these MMCC businesses. I did not have an understanding of the retail MMCC laws in San  
27 Diego, but Ray told me he was well versed in these laws. Ray explained to me that our  
28



1 location was appealing to him because it was unique in that City of San Diego zoning  
2 allowed for an MMCC type of business at this location. I told him that my interests in the  
3 property were not in running an MMCC business but were in lighting and the development  
4 and expansion of our 151 Farms.

5 97. Ray was undeterred by my resistance and insisted that he would be entirely responsible for  
6 the MMCC business and would acquire the licensing and permits necessary to maintain  
7 compliance for it. His pitch was that the dispensary would bring more attention to what I  
8 was doing at 151 Farms and that by working together we would present to the community a  
9 sustainable, organically grown "Seed to Sale" model of what our 151 Farm  
10 represented. That concept appealed to me and with that I considered his offer under the  
11 following conditions:  
12

- 13 a. I would first visit one of his other MMCC businesses to see for myself how it was  
14 being run. The business he took me to was in Mira Mesa and I was impressed with  
15 how well it was built out and how well it appeared to be run.
- 16 b. Ray's and my businesses would be clearly divided with separate entrances and  
17 addresses.
- 18 c. I would have nothing to do with his business because, unlike Ray, who had operated  
19 retail cannabis dispensaries, I knew nothing of what it took to be licensed and  
20 compliant for this type of business.
- 21 d. Ray assured me that his intentions were to become a long-term tenant and that he  
22 would prove his value by not interfering with my current business operations and by  
23 signing a short term, 6-month lease while he went about acquiring the necessary  
24 licensing and permits to operate his business.
- 25 e. Ray agreed to these terms and the Lease Agreement was executed on July 20, 2015  
26 and was set to expire on December 20, 2015.

1 98. With our Agreement in place, Ray began operating his MMCC business, which he called  
2 Pure Meds. The following statements reference my observations and opinions of Ray and  
3 the business from July 2015 until February 2016;

- 4 a. Ray was a good tenant who paid his rent on time and never presented any problems  
5 for me as a landlord.
- 6 b. Ray was at the property daily and ran what appeared to me to be a transparent,  
7 successful and well managed business.
- 8 c. Ray had licensed and armed security with controlled access and paid attention to the  
9 details that I initially feared would detract from my Inda-Gro and 151 Farms  
10 business. The concerns I had were that the retail business would attract people who  
11 would hang around outside the business or attract criminal elements. That never  
12 happened. In fact, just the opposite occurred. Pure Meds attracted repeatable local  
13 customers who appreciated that they could acquire their medical grade cannabis  
14 products without traveling great distances or having to deal with an underground  
15 resource.
- 16 d. The operation of Pure Meds did in fact increase the interest in 151 Farms and our  
17 Inda-Gro lighting products.
- 18 e. Prior to witnessing how Pure Meds operated, I had no firsthand knowledge of how a  
19 retail MMCC would or should operate. During the course of his 6 month lease I had  
20 a chance to form some opinions that were, for the most part, positive. While the  
21 retail side of the business still did not inspire me to get involved, I was satisfied that  
22 those who had the experience and resources necessary to manage the day to day  
23 operations of the business would be an asset to me and my goals with 151 Farms.
- 24 f. When the end of the lease came up, I asked Ray if he planned on staying and what  
25 the status was on his licensing with the City. He told me that it was in process and  
26  
27  
28



1 that he would have the license within the next 90 days. I had no reason not to  
2 believe Ray as he had been a man of his word in everything he had promised me  
3 before. In addition, I, as a landlord, did not see myself as some sort of traffic cop  
4 who was expected to make sure Ray paid all his taxes and operated in accordance  
5 with all the laws and regulations that his type of business required. If Ray did not  
6 secure the necessary operating permits I knew that the City would not allow him to  
7 operate and would shut down his business. With that, I agreed to let him stay on the  
8 property on a month to month basis for 90 days, at which time, if he had the license  
9 to operate, I would give him a 1-year lease. That was satisfactory to Ray and we  
10 continued with our relationship.  
11

12 99. In February 2016 I was served with a lawsuit by the City of San Diego that charged me with  
13 running an illegal cannabis dispensary. I was very surprised to receive this lawsuit because  
14 it listed me as the owner/manager of Pure Meds and that was never the case. Had the City  
15 noticed me by letter that my tenant, Pure Meds, was not in compliance with the MMCC  
16 licensing requirements and that my property was not in an area that could ever be zoned for  
17 an MMCC Conditional Use Permit, I would have taken action and would have served Ray  
18 with an Unlawful Detainer. At the time I was served this lawsuit, Ray was no longer renting  
19 under a lease and he was certainly not in compliance with our Agreement that he operate in  
20 accordance with city rules and regulations for his business.  
21

22 100. Ray was not named in that lawsuit because the City was unable to identify who the  
23 actual tenant/operator of Pure Meds was. When I showed the lawsuit to Ray, he offered to  
24 pay for my legal defense until the case was adjudicated as long as he was able to continue  
25 operations. He told me that this was not the first time he had seen this happen and that he  
26 was certain that his lawyer could get the case dismissed or obtain a negotiated  
27 settlement. He told me he would start a petition that his patients would sign asking the City  
28

1 to allow Pure Meds to remain open. I accepted that offer and was prepared to see where this  
2 would go once the lawyers for both sides got together and worked out the details. In less  
3 than 30 days Ray provided me with 19 pages and some 200 signatures of patients that  
4 wanted Pure Meds to remain open. At the time I thought there might be a pretty good  
5 chance of negotiating something with the City that allowed him to stay open but of course I  
6 didn't know what would come of it since a rezoning had taken place.  
7

8 101. The only way I discovered that my property had been rezoned was by my having  
9 been named in that lawsuit. Within the lawsuit it states that my property had been in an  
10 MMCC compliant zone prior to January 13, 2016 at which time the City of San Diego  
11 rezoned the property, for unknown reasons, so that it would no longer be eligible to operate  
12 as an MMCC. Prior to the rezoning neither I nor any of my neighbors that I spoke with had  
13 been noticed that this rezoning was to occur. When I requested the public information as to  
14 what notification had been given to the property owners that this rezoning was to be  
15 considered, the information I received from the city proved that there had been virtually no  
16 notice given to any of the property owners and the notices that were given talked obliquely  
17 of a general development plan that included a shopping center approximately 2 miles from  
18 our properties.  
19

20 102. The City next sought a Temporary Restraining Order on me to keep me off the  
21 property. These TRO motions are usually summarily granted to the City but in my case,  
22 when I showed up to court to argue that I was NOT the owner of Pure Meds and was instead  
23 the owner of the PROPERTY and that I had just found out from the details given in that  
24 lawsuit about the rezoning issue on my PROPERTY, the Judge asked the City Attorney if  
25 that was in fact the case and the City Attorney admitted that it was. With that, the Judge  
26 asked me directly if I would be willing to cooperate with the City Attorney in identifying  
27 who the owner of Pure Meds was, to which I responded that I had no problem doing so. The  
28



1 Judge then denied the TRO. I would have thought my agreeing to cooperate with the City  
2 Attorney in this matter would have satisfied the City Attorney but she and her boss were  
3 quite upset with the denial of the TRO and argued after the decision had been made that I  
4 was a threat and that the Judge should reconsider. The Judge would not alter his decision  
5 and I was able to continue operating my business while I decided what to do next with Ray  
6 and Pure Meds.  
7

8 103. With the TRO having been denied, the City asked for and received a warrant to come  
9 onto the property and seize anything related to what they determined was illegal drug  
10 activity.

11 104. On April 6, 2016, approximately 30 armed police officers rushed onto my property  
12 and placed me and my 3 employees who were on site in handcuffs.

13 105. I never resisted and offered to open every door or cabinet that I had access to as they  
14 requested. I told them that had they requested a tour of the property, I would have given  
15 them one. I regularly conduct these tours and believed that I was operating in compliance  
16 with the laws as defined by Prop 215 and SB 64. Everything that the officers wanted to see  
17 within my areas of operational control was made available to them. I never denied that there  
18 was cannabis being grown and processed on my property but I had the Physician's  
19 Recommendations posted for the plants and materials on hand and believed I was operating  
20 legally within the limits set forth under these laws. With that, the officers counted and  
21 inventoried all of the items, which included company computers, that they felt they might be  
22 able to use to prosecute me should they choose to.  
23  
24

25 106. When it came to the officers gaining access into Pure Meds, I told them that I did not  
26 have a key to that area as it was sublet. When they asked me who the owner of Pure Meds  
27 was, I told them his name was Ray and I did not know his real name as I had forgotten  
28 it. The officers asked me if I could get them his real name and I told them that I could but it

1 would require me finding the lease I had with him which was on the computer they had just  
2 confiscated as evidence. The officer noted that the information was available on my  
3 computer and a locksmith was called to gain access into Pure Meds.

4 107. During the approximately 3 hours the officers were on site conducting their  
5 investigation, I pleaded with them not to kill the mother plants that had been hybridized and  
6 genetically adapted to grow in an aquaponic system. These were high CBD (to be  
7 differentiated from the more hallucinogenic THC) strains that we were developing that were  
8 showing promise in a high nitrogen system without the need for trace mineral  
9 supplements. It had taken us nearly 3 years to accomplish that task.

10 108. Some of the officers appeared sympathetic to what I was telling them. They  
11 admitted they had never seen an aquaponics cultivation system like ours in the past. I took  
12 the time to explain to them what our purpose was and, although they still had a job to do, I  
13 could tell they were interested in what we were doing. For example, I was asked by one of  
14 the officers how these products might work for dogs that might have seizures. Another  
15 officer told me his mother had fibromyalgia and asked if an organically grown CBD product  
16 would offer her some relief. I don't fault the officers for what happened that day. I saw  
17 them on the phone trying to see if they could get permission to avoid killing the mother  
18 plants. Whoever they were talking to, though, denied that permission and the plants were  
19 all, every single one, killed and taken in for evidence. I was heartbroken. We lost some  
20 very solid genetics that day.

21 109. The officers eventually removed the handcuffs and left without arresting me or  
22 anyone from my company. I was told that a Pure Meds guard was briefly detained on a  
23 weapons and cocaine charge but when they found that the gun was properly registered and it  
24 was not cocaine after all, the guard was released from custody.



1 110. After the officers left we were all pretty shaken up but I got everyone together and  
2 told them that we had done nothing wrong and we were going to return to our normal  
3 activities as soon as possible. With that, I invited local TV stations onto the property who  
4 were congregating outside our yard watching the police action occur. I got them to set their  
5 cameras up outside of our fish tanks and I conducted interviews so I could tell listeners our  
6 side of the story. I wanted people to know what we stood for as a 151 Farm and not see us  
7 as just another one of the illegal pot shops that were springing up everywhere and getting all  
8 the media attention.  
9

10 111. The next day I got a phone call from Ray who told me he was sorry this had  
11 happened and that he wanted to resume operations as quickly as possible. He told me these  
12 raids were common practice and the normal way things were conducted until the case went  
13 to trial. He told me that these types of businesses would typically continue to run for up to  
14 another 6 months before they were permanently shut down or a settlement was reached that  
15 allowed them to continue to operate.  
16

17 112. I asked him if he had, in fact, ever made an attempt to apply for an MMCC CUP and  
18 he told me that, while he had originally intended to, he never did. I told Ray that had he  
19 done what he had originally promised by applying for the CUP, he would have had a very  
20 good chance at being awarded the CUP since the zoning allowed for it at the time he began  
21 renting from me. It was the lawsuit that was filed which first informed me that my property  
22 had been eligible for a CUP and then, for whatever reason, the property was rezoned to  
23 make it ineligible for a CUP shortly before the case against me was filed. Naturally I was  
24 very upset with what Ray had put me through and was even MORE upset that his actions  
25 had reduced the value of my property if the city having rezoned my property right after Pure  
26 Meds began business made it permanently ineligible for any future MMCC business to  
27 operate.  
28

1 113. Since Ray had never attempted to apply for the CUP after he told me that he would, I  
2 told him that he could no longer continue to operate his business on my property. Ray was  
3 given one week to remove his remaining possessions from the property before I disposed of  
4 them. He was not happy that I wasn't going to let him reopen. He offered me considerably  
5 more money to which I said "no" and that my decision was final. He begrudgingly accepted  
6 that and the next day he had people come and remove his remaining items. Ray never set  
7 foot on my property again.  
8

9 114. After the raid, I never heard from anyone with the City who wanted any additional  
10 information from me regarding Ray. I believed that whatever information they needed they  
11 had found on my computer and they didn't need my assistance.

12 115. After a couple of months the City decided to charge me personally with  
13 exceeding the allowable plant counts by adding in the clones that I had not included in our  
14 counts because they were not rooted. I was arrested and booked into jail at which point I  
15 bailed out and got prepared for my arraignment.  
16

17 116. A few days prior to my arraignment, I called the City Attorney assigned to my case  
18 and told him that I was going to plead Not Guilty based on the fact that the clones they had  
19 added into the plant counts were not viable since they had not yet rooted. He considered this  
20 and **decided to drop the charges at least for the time being** but he did reserve the right to  
21 recharge me in the future if additional information was presented.  
22

23 117. I got a letter from the District Attorney stating that after a review of the evidence  
24 they had decided not to prosecute me but that the City of San Diego still held the option of  
25 doing so.

26 118. On March 15, 2017 I received notice that the City of San Diego would be charging  
27 me with 4 misdemeanor counts relative to my operations, **1 day before the statute of**  
28 **limitations would have ran.** I retained the legal services of Mr. Robert Bryson and went to



1 the arraignment on April 5, 2016 where *the plan was for me to plead Not Guilty* and take it  
2 to trial if necessary.

3 119. Prior to the day of arraignment and entering my plea, I had not seen the report or any  
4 evidence that had been used to bring these 4 misdemeanor charges against me. The City  
5 Attorney met with Mr. Bryson and me in the hallway and presented us with the case file for  
6 our review. This was the first time that I became aware that Ray had been arrested and was  
7 awaiting trial on charges of his own. From the evidence I could see that Ray's other  
8 locations had been shut down and that he had made agreements with the City that, to avoid  
9 charges, he would agree to not operate an unlicensed MMCC business within the City of  
10 San Diego in the future. Clearly with his Pure Meds operations on my property he had  
11 violated those agreements.  
12

13 120. After Mr. Bryson and I had spent about 30 minutes reviewing the documents, we  
14 asked to speak to Deputy City Attorney Mark Skeels, who was handling the matter. What  
15 Mr. Skeels told us was, that since Pure Meds did not reopen after the raid, which was what  
16 usually happened, the City was willing to offer me a deal in order to settle the matter  
17 without it going to trial.  
18

19 121. Mr. Skeels told me that if I would agree to forfeit the \$30,000 in cash that had been  
20 seized from Pure Meds during the raid and plead guilty to one misdemeanor charge of a  
21 Health and Safety Code section HS 11366.5 (a) violation, the other 3 charges would be  
22 dropped. As Mr. Skeels explained to me, pleading guilty to this single charge was my  
23 accepting that there had been a code violation on the property and I would be on probation  
24 for 3 years to assure that I would not violate this Code again. Mr. Skeels agreed that Mr.  
25 Bryson could take some time to consider this offer.  
26

27 122. After discussing with Mr. Bryson that this offer seemed reasonable providing there  
28 was language added into the plea agreement that for the 3 years I would be on probation and

1 because I agreed to waive my 4th amendment rights, I would maintain my Prop 215 medical  
2 cannabis cultivation rights and not be subject to what was still unknown medical cannabis  
3 cultivation limits as would be defined in Prop 64.

4 123. Mr. Skeels asked why I wanted that language in the Plea Agreement and I told him  
5 that I had no problem proving over the 3 year course of my probation that as a medical  
6 cannabis patient, who cultivated cannabis at my property and planned on continuing to do  
7 so, I was in compliance with Prop 215 but that, based on what I knew of the Prop 64 law  
8 which was due to take effect on January 1, 2018, I wanted whoever was inspecting me and  
9 my property to hold me to a recreational standard that may, as the guidelines under Prop 64  
10 were not yet finalized, conflict with a medical standard. The language in the Plea  
11 Agreement would be as much for my benefit as for that of any inspecting authority who  
12 would visit me over the course of the 3 years' probation.  
13

14 124. Mr. Skeels considered this and agreed that as far as he and the City were concerned,  
15 adding language to the Plea Agreement to that effect was not a problem and that it would  
16 indeed provide for clarification of enforcement standards for those authorities who would be  
17 tasked with inspecting me and the property for Prop 215 compliance during the course of my  
18 3 years' probation.  
19

20 125. Having agreed to that, I suggested that Mr. Skeels also add language to the Plea  
21 Agreement that would include a limit of up to 4 Physician's Recommendations for those  
22 patients for whom I was growing cannabis. Mr. Skeels told us that adding language to that  
23 effect was not necessary because the Prop 215 statute didn't set a limit on Physician's  
24 Recommendations. He also told us that we simply needed to have those Physician's  
25 Recommendations available for inspection and that they had to be current. Mr. Skeels told  
26 us that all the Plea Agreement needed to state was that I would be retaining my rights under  
27  
28



1 Prop 215. With that, we agreed to the terms of the Plea Agreement and Mr. Skeels left us to  
2 await his return with the finalized Plea Agreement.

3 126. When he returned a short time later, Mr. Bryson and I reviewed the Plea Agreement  
4 and saw that the language we had discussed about my retaining my rights under Prop 215  
5 had been added. With that, Mr. Skeels then reviewed every element of the Plea Agreement  
6 with us and had me initial each box that was required. Once this was completed, we went  
7 before the Honorable Judge Rachel Cano.  
8

9 127. While reviewing the Plea Agreement from the bench, Hon. Judge Cano spoke to me  
10 directly and asked why the Prop 215 language had been added into the Plea Agreement. I  
11 explained that with the obvious conflicts for me between Prop 215 and Prop 64, that I, as a  
12 medical cannabis patient who cultivated cannabis at this property, needed the standard I  
13 would operate under to be defined in this agreement or it would be subject to interpretation  
14 by any inspecting authority who would visit me during the course of my 3 years'  
15 probation. Judge Cano considered this and agreed that it was a simple and straightforward  
16 solution to what she and even the City saw as a way of bringing clarity to these evolving  
17 standards. With that, she accepted the Plea Agreement and I believed we were done.  
18

19 128. In a wild turn of events that I can only describe as the most duplicitous bait and  
20 switch imaginable... Within days of Mr. Skeels convincing my attorney and I through his  
21 *assurances of the terms* of our plea agreement, the City filed a *Lis Pendens* on my property  
22 (April 18, 2017 – Over 1 year after the incident took place.) and began the process of selling  
23 it as a seized property asset, which I now became aware was what I had unknowingly agreed  
24 to in the Misdemeanor Health and Safety 11336 (a) code charge to which I had pled guilty in  
25 the Plea Agreement I had entered into with the City on April 5, 2017.  
26

27 129. I immediately contacted Mr. Bryson and asked if he had known that, when I agreed  
28 to enter into this Plea Agreement, that it meant I was forfeiting my building and land to the

1 City. That had NEVER been discussed prior to my accepting the Plea Agreement. In fact,  
2 prior to accepting the Plea Agreement, Mr. Skeels had gone out of his way to go over the  
3 Plea Agreement in detail with us and had even added the language of how I would retain my  
4 Prop 215 rights over the course of my 3 years' probation. If Mr. Skeels knew then that I was  
5 giving up my building and land under this Plea Agreement, why wasn't it brought up at that  
6 time? Both Mr. Bryson and Mr. Skeels are officers of the court. Both had an obligation to  
7 tell me that's what my agreeing to a misdemeanor guilty plea of HS 11336 (a) meant and  
8 neither one did that. In fact, the last area of refuge I would have had prior to this Plea  
9 Agreement being accepted by the court would have been if Judge Cano had mentioned to me  
10 that the language we had added into the Plea Agreement where I retained my Prop 215  
11 rights was meaningless in light of the fact that pleading guilty to this one charge meant I was  
12 not going to own the property anyway.  
13

14 130. Mr. Bryson was as shocked as I was when he realized what we had agreed to. He  
15 told me that he had no idea that losing the building and land would be the consequence of  
16 entering into that deal with Mr. Skeels. With that, he wrote me a Declaration that stated  
17 that he was not aware and had he known that my losing the building and land was the  
18 consequence of entering into that Plea Agreement with the City, he would have advised  
19 against signing it. I received that Declaration from Mr. Bryson and dismissed him from any  
20 future representation.  
21

22 131. I then reached out to Mr. Skeels and asked if he was aware that my agreeing to this  
23 single misdemeanor charge meant I would be giving up my property. He told me that he  
24 was not aware that that was the consequence either, but he would look into it and get back to  
25 me. I never heard back from him.  
26

27 132. I then sought out and retained new counsel with attorney David Demian of the law  
28 firm Finch, Thorton & Baird (FTB) representing me in this matter.



1 133. In a phone call between Mr. Demian and Mr. Skeels that was made on speaker phone  
2 from a conference room at the FTB offices, thus allowing me to hear what was being  
3 discussed, I learned what Mr. Skeels's real position on the Asset Forfeiture matter that my  
4 Plea Agreement had represented was. Mr. Skeels informed Mr. Demian that he too was on  
5 speaker phone as there were other attorneys from his office listening in on the conversation.

6 134. Mr. Skeels's stated position during that call was that we had a deal in that Plea  
7 Agreement and it would stand. According to him, my only options were to elect to  
8 withdraw the Plea Agreement, after which the City would take me to trial on the 4  
9 misdemeanor charges that I was originally charged with, or to agree to pay the City  
10 \$100,000 and all charges would be dropped. What I was hearing was extortion, plain and  
11 simple.  
12

13 135. Mr. Demian told Mr. Skeels that the \$100,000 payment he was seeking was  
14 unacceptable and that the only thing that might work on my behalf would be to find a lesser  
15 amount in the interest of offsetting the legal fees I would have to incur in order to defend the  
16 4 misdemeanor charges. Mr. Skeels asked what that amount might be and Mr. Demian  
17 responded with a counteroffer of \$5,000, referring to that amount as a nuisance payoff that  
18 he had been authorized to submit on my behalf. Mr. Skeels rejected the counteroffer and told  
19 Mr. Demian to get back to him if and when we were serious.  
20

21 136. What was clear to me during that conversation was that the City wanted a payout and  
22 what they had seized during the raid was not enough. The HS code section violation to  
23 which I had pled guilty was not widely understood. This was a new tool for the City to use  
24 to shut down illegal dispensaries and Mr. Skeels knew it. He was not willing to negotiate  
25 because he felt he didn't have to. Mr. Skeels had Mr. Demian on speaker phone in his office  
26 so he could make a point to those listening in on his side that the City did in fact have the  
27 upper hand in these negotiations and that Real Property Asset Forfeiture was a tactic they  
28

1 could employ in other cases where a landlord rented to a tenant who was not licensed to run  
2 a MMCC business. At one point in the conversation when Mr. Demian questioned Mr.  
3 Skeels's authority and skills in negotiating a settlement on behalf of the City, Mr. Skeels got  
4 upset that Mr. Demian would even question his professional qualifications. Mr. Demian,  
5 sensing that he had offended Mr. Skeels, immediately began apologizing and told Mr.  
6 Skeels that he would confer with me and respond with another offer. Mr. Skeels told Mr.  
7 Demian that the new offer would need to be near the \$100,000 mark or it would be rejected,  
8 and we would be wasting precious time and the property would be sold out from underneath  
9 me as the law allowed.  
10

11 137. After that conversation, Mr. Demian admitted he was not the best person to represent  
12 me in further negotiations in this matter with Mr. Skeels. I needed to retain co-counsel who  
13 had experience in successfully negotiating with Mr. Skeels. They had to be able to defend  
14 me in this matter should we go to trial and that would start with them withdrawing my Plea  
15 Agreement based on my having been enticed to do enter it under fraudulent representation  
16 and incompetent counsel. With Mr. Bryson's declaration in which he admitted not knowing  
17 what the consequences of HS 11336 (a) were, I was hopeful that if the threat of withdrawing  
18 the Plea Agreement came from the right lawyer, that Mr. Skeels would want to settle the  
19 matter without going to trial. With that in mind, I engaged the legal services of attorney  
20 Stephen G. Cline in anticipation of the Plea Agreement being withdrawn and my taking this  
21 matter to trial should Mr. Skeels and I not come to terms.  
22  
23

24 138. Mr. Cline reached out to Mr. Skeels by phone and told him that unless the City was  
25 willing to settle this matter for a much lower amount than the \$100,000 they were seeking,  
26 he had every intention of going before Judge Cano to request a withdrawal of the Plea  
27 Agreement. Mr. Cline was prepared to defend his request based on the fact that the Real  
28 Property (building and land) Asset Forfeiture was not listed in the records of items seized in



1 the raid, nor was there ever any posting by either the officers or the City Attorney that the  
2 building and land were considered part of the seized items. In addition, the TRO that the  
3 City had requested had been denied which meant that I was not party to my tenant's  
4 business operations, I had incompetent legal representation when I entered into the Plea  
5 Agreement and finally, neither Mr. Skeels nor Judge Cano had made me aware that the  
6 consequence of signing the Plea Agreement was the forfeiture of my Real Property, which  
7 was valued at approximately \$500,000 based on fair market value comparisons and up to 10  
8 times that should it ever qualify for a licensed MMCC business.  
9

10 139. I did not feel that Judge Cano would react well to what Mr. Cline was prepared to  
11 present to her if we did not reach a settlement and, if Mr. Skeels could be persuaded to relax  
12 his demands, it may not be necessary to do so.

13 140. After consideration, Mr. Skeels suggested that the amount be reduced to  
14 \$50,000. Mr. Cline told him he would convey that message to me and get back to him. I  
15 felt that \$50,000 was still outrageous in light of the reasons that Mr. Cline had presented to  
16 Mr. Skeels earlier, but when I considered the potential legal fees should this matter go to  
17 trial, I told Mr. Cline to return to Mr. Skeels with an offer of \$10,000 but with an  
18 authorization limit of \$25,000 should an increase be necessary.  
19

20 141. Mr. Skeels rejected the offer of \$10,000 and said we would have to agree to an  
21 amount closer to the \$50,000 they were seeking, or this would go to trial. With that, Mr.  
22 Cline provided Mr. Skeels with our best and final offer of \$25,000 and advised Mr. Skeels  
23 that, should that amount be unacceptable, we were prepared to go to trial and win based on  
24 the merits of our case.  
25

26 142. Mr. Skeels accepted the \$25,000 offer and the matter was turned back over to David  
27 Demian at FTB for finalization of the terms and document exchange. On October 4, 2017 a  
28 Stipulation for Judgement was executed showing the listed seized items from the raid and a

1 \$25,000 payment for full satisfaction on my Real Property, which they had listed as 6176-  
2 6184 Federal Blvd. I only own the 6176 Federal Blvd property but the Stipulated  
3 Judgement also covered the rental property I had next door.

4 143. On January 2, 2018 I made the \$25,000 payment to the City per the terms of the  
5 Stipulated Judgement using borrowed money.

6 144. What I take from this is that Mr. Skeels has now set a precedent in that a City can  
7 include the Real Property of the land owner in their seized assets regardless of whether or  
8 not that landowner had anything to do with the business their tenant was operating. While  
9 he wanted as much as he could get from me, it was more important to show those other  
10 prosecuting attorneys that this was a way of forcing landlords to assure their tenants were  
11 properly licensed when it comes to an MMCC dispensary. Landlords are now going to have  
12 to be those traffic cops which means that if the tenant has a license and then loses it during  
13 the course of the tenancy, that landlord may face the same asset seizure and forfeiture  
14 actions that I did, whether or not they were aware of their tenant's actions.  
15  
16

17 LARRY GERACI

18 145. In late September 2016 I received a phone call from Mr. Larry Geraci. I had never  
19 met or heard of Mr. Geraci prior to that call. The purpose of Mr. Geraci's call was to inform  
20 me that he had become aware of my property from what he had seen from the Pure Meds  
21 situation and he wanted to know if I would be interested in selling him the property for the  
22 purposes of opening a licensed MMCC.  
23

24 146. I told Mr. Geraci that the City had rezoned the property and that it was my  
25 understanding that it would no longer qualify for an MMCC business. Mr. Geraci told me  
26 that that was not necessarily the case and he would like me to consider what he had to say in  
27 a meeting that would be held at his office. I agreed to the meeting and met him in his office  
28 within a few days of his initial call.



1 147. I found that Mr. Geraci was a professional Financial Planner who operated out of  
2 nice offices in the Kearny Mesa area of San Diego. He told me that his core business was  
3 Financial and Tax Planning and that he represented clients in his professional capacity as an  
4 Enrolled Agent. Mr. Geraci was also a real estate investor/developer and one of his  
5 investments was buying specific properties in locations that can be converted into MMCC  
6 retail cannabis businesses.

7 148. I asked Mr. Geraci how many MMCC businesses he had in operation and he told me  
8 that he had multiple MMCC businesses whereby he would finance the purchase of the  
9 property and pay for the licensing to get the business MMCC compliant. Once completed,  
10 he would have others own and operate the MMCC business and he would get an ongoing  
11 equity position in that business. Mr. Geraci told me he preferred to remain in the  
12 background on these transactions since the perception of him being directly involved in  
13 cannabis business may harm his other business enterprises. That did not come as a surprise  
14 to me and I accepted that statement on face value.  
15

16 149. Regarding the rezoning of my property, which from my understanding would now  
17 make my property ineligible for an MMCC business, Mr. Geraci told me that he had special  
18 knowledge and influence that would allow him to get my property through that process by  
19 having it rezoned back into an MMCC compliant zone and then submitting the CUP  
20 application so the MMCC could be run on that specific property. If anyone else had been  
21 telling me this, I would have not believed them but Mr. Geraci appeared to have the  
22 relationships, experience and financial wherewithal to make something like this happen. As  
23 he was a licensed financial professional who is held to the highest fiduciary standards, I was  
24 interested in pursuing these negotiations with him to see where they might lead.  
25

26 150. At the time we were discussing his special relationships that would assist in getting  
27 my property rezoned to an MMCC compliant zone, I was completely unaware that the City  
28

1 of San Diego, which had rezoned my property to an ineligible MMCC compliant zone in  
2 January of 2016 while they were building a case against me and Pure Meds, had, once Pure  
3 Meds was shut down, once again rezoned the area and my property in April of 2016 without  
4 notifying me or any of the other property owners in the area.

5 151. *Mr. Geraci had to have already known this prior to our first meeting in early*  
6 *October 2016 that included discussing his special relationships that could have my property*  
7 *rezoned. He didn't need any special relations as the rezone had already occurred. That's*  
8 *why he knew from the moment he met me that he could get the CUP Application*  
9 *accepted. He just wasn't positive he could get it approved. For that reason, he lied to me*  
10 *about needing to get the rezoning done before he could even submit the CUP*  
11 *Application. Mr. Geraci was a fraud from the moment I met him. I just didn't know that at*  
12 *the time.*

14 152. During that first meeting, Mr. Geraci told me that, due to the issue I had had with  
15 having rented to an illegal dispensary, I would need to sell the property to him and he would  
16 submit the CUP application in one of his employee's names, Rebecca Berry, because she  
17 had a clean record and would not be denied once the process began.

19 153. Mr. Geraci asked me how much I would want for the property and I told him I would  
20 agree to \$800,000 as long as I got an equity position in the monthly MMCC sales that  
21 amounted to \$10,000 or 10% of the net profits, whichever was greater and he agreed to that.

22 154. During October 2016 I met with Mr. Geraci at his office on several more  
23 occasions. We discussed in detail how, in addition to whatever he was willing to do to  
24 purchase and develop my 6176 property, I was interested in having him assist me in  
25 identifying other properties where I could expand my work with 151 Farms. Like Ray  
26 before him, I wanted him to understand that the only reason I wanted to sell the property  
27 was so that I could afford to move into a larger property. I had no interest in owning or  
28



1 managing an MMCC business so if that side of the equation worked for him, within the  
2 terms and conditions we agreed to, I could stay focused on my goals with 151 Farms. It  
3 was to be a win/win situation for the both of us. Mr. Geraci agreed to that and I told him I  
4 would draft a Memorandum of Understanding (MOU) that would act as a working document  
5 to memorialize this conversation and serve as the basis of our agreement once his lawyer  
6 had prepared it.

7  
8 155. We had orally agreed to, among other things, a sales price of \$800,000 for the  
9 property contingent upon him obtaining the MMCC CUP approval from the City of San  
10 Diego and that was memorialized in the MOU I created and sent to Mr. Geraci. Upon  
11 approval of the MMCC CUP, the payments would be split into \$400,000 for me and another  
12 \$400,000 for Inda-Gro for relocation of the business. The terms for the relocation of the  
13 business were spelled out in a second working document I called the Service Contract. That  
14 Service Contract was sent along with the MOU and required that Mr. Geraci, if he were to  
15 actually acquire the property upon Approval of the CUP Application, would grant Inda-Gro  
16 the right to remain on the property at no rent until the plans were completed and accepted by  
17 the City of San Diego Development Services and he was ready to begin construction on the  
18 new MMCC. While Mr. Geraci never acknowledged either of my working documents in  
19 writing, he told me over the phone that he was fine with them and that they would be  
20 incorporated into a contract that his lawyer would prepare and I could make changes to the  
21 contract before we consummated our deal.  
22  
23

24 156. While I was waiting for his lawyer to send me the contract, Mr. Geraci asked me to  
25 come into his office on October 31, 2016. It was at this meeting that Mr. Geraci asked me to  
26 sign a City of San Diego CUP application form which listed Rebecca Berry as the qualifying  
27 applicant. Rebecca Barry was not present when I signed this **and to my knowledge I have**  
28 **never even met her.** Mr. Geraci told me he wanted this signed in preparation for when the

1 rezoning had been completed and the CUP Application could be submitted. According to  
2 him, it would not and could not be submitted until the rezoning had taken place.

3 157. During our phone calls Mr. Geraci told me that the terms I had outlined in the MOU  
4 and Service Agreement were acceptable and that he would have his lawyer prepare a  
5 contract that would include these terms and that a \$50,000 non-refundable deposit which  
6 would not be contingent on the City of San Diego MMCC CUP approval would be paid at  
7 the time we signed that contract.

8  
9 158. Mr. Geraci told me that, in anticipation of the contract, he would like to immediately  
10 begin the process of getting the property rezoned so that the CUP application could be  
11 submitted, and he could pay me the entire \$50,000 as we had agreed.

12 159. Mr. Geraci told me that he would like me to stop by his office and sign a receipt for  
13 \$10,000 which would be applied toward the \$50,000 earnest money. He also told me that  
14 this signed receipt would allow him and/or his agents to begin the process of getting the City  
15 to rezone the property. The plan that Mr. Geraci had was that the rezoning might take 4-6  
16 weeks and he did not want to pay the entire \$50,000 until the rezoning had occurred and the  
17 CUP application could be submitted. This seemed reasonable to me and we set a meeting  
18 for November 2, 2016 in his office.

19  
20 160. On November 2, 2016 when I arrived at the scheduled meeting with Mr. Geraci, he  
21 told me that he had already begun the initial process of getting the property rezoned and that  
22 the CUP application may be ready in as little as 2 weeks. With that, he had me sign a 3  
23 sentence document that I considered a receipt which stated the \$800,000 sales price and that  
24 I was accepting the \$10,000 in a cash payment from him. He had a Notary Public certify  
25 that it was my signature on the document. What I was signing was not any sort of contract  
26 that held the terms we had discussed in my MOU and Service Agreement. It was most  
27 certainly not a Real Estate Contract as required by California law and Mr. Geraci, who held  
28



1 CA Real Estate License number 01141323, knew that. During our meeting Mr. Geraci did  
2 not try to represent this as a final contract but as a receipt to get the rezoning process  
3 underway. I did not sense that he was trying to pull one over on me and felt that, in a  
4 professional capacity, he would not attempt something like that. I believed him and looked  
5 forward to seeing him make the things happen he said he and he alone had the skill sets to  
6 do. Nonetheless, when I got back to my office, I felt as though I should send him an email  
7 that would memorialize what was said to me when I signed that receipt.  
8

9 161. Within hours of having signed the receipt I sent Mr. Geraci that email in which I  
10 asked him to acknowledge, in an email response, that what I just signed was not meant to be  
11 a final contract between us. Shortly thereafter I received his response stating that he had "no  
12 problem, no problem at all" acknowledging that this was not the final contract. Mr. Geraci's  
13 response to my email reassured me that he was operating in good faith and that the process,  
14 in the order he had described to me, had begun.  
15

16 162. On November 15, 2016 Mr. Geraci asked me to sign another document that would  
17 allow me, as the property owner, to authorize his architect, Mr. Abhay Schweitzer, to view  
18 and copy records at the County of San Diego Tax Assessor's Office of Building  
19 Records. Signing that document requested by Mr. Geraci further led me to believe that I  
20 was the property owner until such time that the CUP Application was granted and I would  
21 sell the property to Mr. Geraci.  
22

23 163. Over the course of the next several weeks I would, through phone conversations and  
24 various texts and emails, of which I have copies, inquire as to how the rezoning process was  
25 coming along. Mr. Geraci always responded that, while they were making progress, the  
26 rezoning had not yet been completed. He told me to be patient and that it would happen. He  
27 also said that he had a team working on this and that he had spent large sums of money, in  
28 all the right places, to see that the property would get rezoned. Again, I had no reason to

1 doubt him since he had professional credentials and fiduciary duties that I believed would  
2 have prevented him from lying. One thing, however, was certain. The original 2 weeks had  
3 expired, and I had not yet been paid the remaining \$40,000 that he had promised.

4 164. In February 2017 I had several other parties contact me and inquire if my property  
5 was available for purchase. Those parties told me that my property was unique in that it fit  
6 the necessary requirements for an MMCC business. Each of these parties also told me that  
7 they too had special skills and connections that would ensure that this property was  
8 approved for an MMCC business. This made me wonder how many more people in the  
9 cannabis business had found out about my property. Had Mr. Geraci managed to get the  
10 rezoning done and just not told me so he wouldn't have to pay the \$40,000 balance on the  
11 non-refundable deposit? Since I didn't know for sure what I had in Mr. Geraci, I told those  
12 interested in the property to submit written offers of which I received two that were worth  
13 considerably more than the offer that Mr. Geraci had made me. If I found that Mr. Geraci  
14 was not acting in good faith, I would have other offers to fall back on if the situation  
15 required it.  
16  
17

18 165. In February 2017, after still not receiving the contract that Mr. Geraci had promised  
19 me in November 2016, I demanded that he send it to me. It was becoming obvious that he  
20 was engaging in delay tactics and I wasn't sure why.  
21

22 166. This got him moving and in late February 2017 I got a contract that his lawyer, Gina  
23 Austin of the Austin Law Group, had prepared on his behalf which I guess he expected me  
24 to sign without reading. This contract missed most of the elements that were in the MOU  
25 and Service Agreement, not the least of which was that in consideration for the sales price I  
26 had set, I would receive 10% of the store's monthly net profits or \$10,000 per month,  
27 whichever was greater. My radar was on full alert.  
28

1 167. I texted Mr. Geraci to ask if his lawyer had even read my MOU and the Service  
2 Agreement, the terms of which Mr. Geraci had agreed to include in the final contract, and he  
3 told me that she must have made a mistake and missed them in that draft. Mr. Geraci  
4 apologized and told me that he had not read the contract that Ms. Austin had prepared and  
5 that she had the working documents necessary to prepare our contract. With that, Mr.  
6 Geraci assured me that the revised version would include those terms and to expect it within  
7 a few days.  
8

9 168. On March 3, 2016, I received the Side Agreement to his Contract and, while it did  
10 include more of the MOU and Service Agreement terms that Mr. Geraci and I had agreed to  
11 in our conversations, it still fell woefully short of what had been agreed to in my working  
12 documents which, per Mr. Geraci, his counsel had to work from. Ms. Austin had  
13 incorporated the 10% or \$10,000 language but there was still highly prejudicial language in  
14 the Side Agreement that I found unacceptable and was in no way was in the spirit of our  
15 early negotiations. For example, Ms. Austin called the \$10,000 payment "the total agreed to  
16 amount" and stated that even that would have to be returned to Mr. Geraci in the event the  
17 CUP Application was not approved. This was not going well.  
18

19 169. In addition to the obvious problems I was seeing from the contracts that Ms. Austin  
20 had prepared, Mr. Geraci was now requesting that we reduce the agreed upon \$10,000 a  
21 month to \$5,000 a month for 6 months until after the store had opened and they started  
22 to get some market share. It was now apparent to me that I needed to get to the bottom of  
23 this and verify whatever it was that Mr. Geraci had been telling me. What more evidence  
24 could there possibly be showing that the monthly equity stake was an integral term of the  
25 agreement we actually made months prior!?!  
26

27 170. At this point it didn't matter what Mr. Geraci told me. What the contract prepared  
28 by Ms. Austin now proffered was that the \$10,000 paid by Mr. Geraci was the total deposit



1 amount that was going to be paid. It was apparent that no matter what, Mr. Geraci was not  
2 to be trusted and he was running the clock and using his lawyer, Ms. Austin, as tools to  
3 defraud me of my property as the terms we had originally agreed upon were no longer  
4 acceptable to him. Nonetheless I had to know the current status of my property zoning to  
5 see where I stood.

6 171. Around March 15, 2017 I decided to call the City of San Diego Development  
7 Services to find out for myself if my property had been rezoned back to an MMCC  
8 compliant zone or if, as Mr. Geraci kept telling me, it was still in process and the CUP had  
9 not yet been submitted. What I found out was astounding!

10 172. Ms. Firouzeh Tirandazi, Development Project Manager for the City of San Diego  
11 Development Services told me that my property had been rezoned to an MMCC compliant  
12 zone in April 2016.

13 173. Mr. Geraci had been lying to me since the beginning. When he had me sign the CUP  
14 application listing Rebecca Berry as the qualifying applicant in October 2016 he knew then  
15 that the rezoning had occurred and that he could submit the CUP Application immediately.  
16 And that's exactly what he did.

17 174. Per Ms. Tirandazi, the CUP Application with Ms. Berry's name on it that Mr. Geraci  
18 had me sign *was submitted on October 31, 2016, just days before I signed his receipt of the*  
19 *\$10,000 which I was paid on November 2, 2016.* Mr. Geraci had needed me to sign that  
20 document so he could, at some point in the future, argue that the document I signed on  
21 November 2, 2016 was the one and only contract. Mr. Geraci had never intended to honor  
22 the terms to which we had agreed in my MOU and Service Agreement.

23 175. After my call to Ms. Tirandazi, I contacted Ms. Berry and Mr. Geraci to tell them  
24 that I had contacted her and now knew that Mr. Geraci had been lying to me all along and  
25

1 that I had just discovered his fraud. Mr. Geraci contacted me by text to ask for a face-to-  
2 face meeting.

3 176. On March 17, 2017 in an email I sent to Mr. Geraci, I declined his request for  
4 another face-to-face meeting and stipulated that all future communications between us be in  
5 writing. I demanded that he honor the terms of our MOU and Service Agreement, that the  
6 \$40,000 balance of the non-refundable \$50,000 be paid immediately and that, regarding the  
7 \$10,000 or 10% of the net profits, whichever was greater, we agree to use a 3rd party  
8 accountant to assure proper distribution. I required that Mr. Geraci accept these terms in  
9 writing no later than March 20, 2017 at 12:00 or I would cease any further business with  
10 him.  
11

12 177. On March 21, 2017, having received no response from Mr. Geraci, I sold my  
13 property to Richard J. Martin for \$2,000,000 and a guaranteed 20% equity in a new MMCC  
14 business should it be established. The non-refundable earnest money was \$100,000, which I  
15 have long since expended to use to pay legal fees I had incurred in the matter with Mr.  
16 Geraci. Unlike Mr. Geraci's so called contract, the sales contract with Mr. Martin was done  
17 on a notarized Commercial Property Purchase Agreement with an Addendum that  
18 acknowledged my MOU and the terms I set forth within it.  
19

20 178. Also on March 21, 2017, after selling the property to Mr. Martin, I went to  
21 Development Services to meet with Ms. Tirandazi in person to see if the CUP application  
22 that they were processing with Ms. Berry's name on it could be transferred to me or an  
23 assignee of mine. Ms. Tirandazi told me that the current CUP Application they had in  
24 process for Ms. Berry had been signed by me and that the only way it could be reassigned  
25 was if Ms. Berry relinquished her rights to it or a court ordered them to reassign it. I knew  
26 that getting Mr. Geraci and Ms. Berry to relinquish their rights to the current CUP  
27 application in process was not an option so I asked Ms. Tirandazi if I could submit another  
28

1 CUP application to run concurrent with the application in Ms. Berry's name. This way my  
2 application would already be in process once the City figured out that neither Mr. Geraci nor  
3 Ms. Berry had a Grant Deed in their name. Ms. Tirandazi told me that the City of San  
4 Diego's policy was that only one CUP application per address would be accepted and that,  
5 as Ms. Berry's was already being processed, I could not submit one at that time. Since I  
6 now knew that Mr. Geraci and Ms. Berry were not going to get final approval on the CUP  
7 without a Grant Deed in their name, I had to consider my legal options.

8  
9 179. On March 22, 2017 I received a letter from Mr. Geraci's new attorney, Michael  
10 Weinstein, informing me that as a result of my having contacted Ms. Tirandazi to see about  
11 having Ms. Berry's CUP application reassigned, Mr. Geraci had instructed Mr. Weinstein to  
12 file a *Lis Pendens* on my property and a lawsuit against me seeking to have me honor what  
13 Mr. Geraci now considered to be the "end all be all contract" I had signed with him on  
14 November 2, 2016. While Mr. Weinstein threatened me with the great harm that would  
15 befall me should this matter go to trial, he also encouraged me to negotiate with them as he  
16 stated there was still time to do so. Because I had not received a response from Mr. Geraci  
17 by the deadline I had given him of March 20, 2017 and having subsequently sold the  
18 property to Mr. Martin, I had no intention of negotiating anything further with either Mr.  
19 Geraci or Mr. Weinstein.

20  
21 180. Until I could resolve the CUP issue with the City of San Diego for what would now  
22 be the new property owner, Mr. Martin, I needed to see if there was a way to maintain the  
23 status of Ms. Berry's CUP application, so I wouldn't waste time submitting another  
24 application after Ms. Berry's application was deemed incomplete because the Grant Deed  
25 would never be in her or Mr. Geraci's name. As far as my hope to negotiate settlement  
26 involving Mr. Geraci relinquishing his rights to Ms. Berry's CUP, telling Mr. Weinstein that  
27 I had sold the property to Mr. Martin was not a good strategy.  
28



1  
2 181. On May 9, 2017 in an email Mr. Weinstein suggested a settlement whereby Mr.  
3 Geraci would, among other things, increase his offer to purchase the property to \$925,000  
4 and pay the \$50,000 non-refundable earnest money but I would have no equity position in  
5 the new dispensary and, while Ms. Berry's CUP application was being processed, I would  
6 agree to cease all cannabis related cultivation activity on the property within 2 days of  
7 signing this agreement.  
8

9 182. I found the May 9, 2017 settlement offer confusing. Why did Mr. Geraci care if I  
10 was cultivating cannabis on site? That had never come up before and now it was a condition  
11 of the "improved" settlement offer. Beyond that, Mr. Geraci proved that no matter who he  
12 had representing him, he was not to be trusted. There was no mention of the 10% equity  
13 position with a \$10,000 a month guaranteed minimum that was preeminent in our original  
14 negotiations. What Mr. Weinstein's settlement offer suggested to me was that, while his  
15 client was at his core a snake, something else was motivating him to be concerned about  
16 what my current activities entailed. I had seen and heard enough.  
17

18 183. On May 12, 2017 I filed a *Pro Se* cross complaint thinking that that might convince  
19 Mr. Geraci to back down from what, in my mind, was an unwinnable situation for him  
20 regarding the purchase of my property. It did not, however, have that effect so I requested  
21 that David Demian represent me and take the case over.  
22

23 184. On June 29, 2017 I filed a Notice of Substitution naming David Demian as new  
24 counsel on my behalf.

25 185. On September 28, 2017 Mr. Weinstein filed a Notice of Demurrer/Motion to Strike  
26 which was his attempt to limit the underlying agreements of my case to the single 3 sentence  
27 document I had signed on November 2, 2016 as the only document that should be  
28

1 considered. He did not want anything else that transpired between me and Mr. Geraci to be  
2 considered.

3 186. On October 24, 2017 Judge Wohlfield issued a Tentative Ruling denying the  
4 Demurrer which was good news for me since my supporting documents against Mr. Geraci  
5 were primarily supported by the written communications that occurred after the November  
6 2, 2017 document was signed.

7  
8 187. With the Demurrer having been denied, my next concern was that the likelihood of  
9 Mr. Geraci getting the property after all the evidence was heard had to be of grave concern  
10 to him. If he were not to acquire the property, then all the work he was doing on the CUP  
11 application would be for naught and he would suffer financially. It is not unreasonable to  
12 think that Mr. Geraci might try to cut his losses by having Ms. Berry's CUP, which he  
13 completely controlled, purposely denied by instructing his agent(s) to create a scenario  
14 wherein that would be the result. In other words, if Mr. Geraci can't have this MMCC  
15 dispensary, no one else will either.

16  
17 188. Should Mr. Geraci decide to sabotage Ms. Berry's CUP application, it would create a  
18 huge financial loss for both me and for Mr. Martin. I had to do something to protect my  
19 interests in the property by seeking protection from the court. By having the court appoint a  
20 Receiver who would give them oversight into what was happening on Ms. Berry's CUP, it  
21 would assure that the CUP process is followed and maintained. If Mr. Geraci felt he was  
22 going to prevail on the Breach of Contract claim he had against me, he would have not been  
23 opposed to my seeking a Temporary Restraining Order against him that would afford me  
24 this protection. That was not the case.

25  
26 189. On December 7, 2017 Mr. Demian had a Writ of Mandate seeking to shorten the  
27 time to trial and a Temporary Restraining Order hearing whereby I would be protected if  
28 Mr. Geraci decided it was in his best financial interests to sabotage Ms. Berry's CUP as

1 opposed to losing the Breach of Contract case he had against me now that his Demurrer had  
2 been denied and all of the evidence subsequent to the November 2, 2017 document would  
3 come into consideration. We believed that while our request for a Writ of Mandate may not  
4 be granted, the TRO would be granted.

5 190. Mr. Demian had 4 or 5 relevant arguments contained within his Points and  
6 Authorities in his TRO motion that were cogent and compelling to the court in granting the  
7 TRO (none of the *relevant arguments towards granting the requested relief* were apparently  
8 raised by him). Furthermore, Mr. Weinstein should have had no opposition to our request  
9 for a TRO if Mr. Geraci actually believed he would prevail in the Breach of Contract suit  
10 against me and he would be awarded the property under the terms of the November 2, 2017  
11 document I signed. If, on the other hand, Mr. Geraci actually believed that he would lose  
12 the Breach of Contract suit now that all the evidence would be heard then Mr. Geraci knew  
13 he had to vigorously oppose our request for a TRO or he would not have an opportunity to  
14 sabotage Ms. Berry's CUP which was in process with the City of San Diego Development  
15 Services and in his complete control.

16  
17  
18 191. In making his decision on the TRO motion, Judge Wohlfield listened to the oral  
19 arguments raised by Mr. Weinstein and Mr. Demian. Mr. Demian only raised the least  
20 relevant point in his oral arguments before Judge Wohlfield, stating that we should be  
21 granted the TRO based entirely on the constitutional protections that are fundamental to  
22 property owners maintaining control of their property. The only reason Mr. Demian raised  
23 that singular point and not the others is because this was the point he was most familiar with  
24 from having successfully argued it in a similar case for another client. Mr. Demian was not  
25 prepared to argue the other, more pertinent issues relevant to my case in front of the  
26 court. Had Mr. Demian's oral arguments included a reference to Judge Wohlfield's previous  
27 ruling on the Demurrer and shown the real harm in not having the TRO for his client's court  
28



1 supervised protection, it would have been simply a matter of Judge Wohlfield supporting his  
2 previous position in denying the Demurrer and looking at ANY of the supporting evidence  
3 that Mr. Demian would have asked him to reference prior to making his decision. Mr.  
4 Demian did none of that while Mr. Weinstein successfully argued that the TRO was not  
5 necessary as it could potentially harm Ms. Berry's CUP process and that Mr. Geraci was  
6 going to win the Breach of Contract case based solely on the November 2, 2017 document  
7 that I had signed.  
8

9 192. Judge Wohlfield denied the TRO on the grounds that Mr. Demian had not provided  
10 him with sufficient evidence to warrant the court's protection of me prior to this matter  
11 being settled in trial.

12 193. Immediately after the hearing, Mr. Joe Hurtado who, as my litigation investor, was  
13 present to ensure that both my and Mr. Martin's legal interests were being protected, met  
14 Mr. Demian in the hallway outside the courtroom. Mr. Hurtado was livid. Having the TRO  
15 denied due to the incompetence Mr. Demian had shown in the courtroom was  
16 egregious. For Mr. Demian not to bring the essential elements of the motion to Judge  
17 Wohlfield's attention while Mr. Weinstein successfully argued their Breach of Contract case  
18 was, according to Mr. Hurtado, "the worst performance he had ever seen by a lawyer!" Mr.  
19 Demian looked down at his shoes and mumbled something about how he had tried and had  
20 to leave to go to another meeting.  
21

22 194. After Mr. Demian left, Mr. Hurtado called to tell me what had happened. I was livid  
23 too. There was no excusing Mr. Demian's performance. I immediately called Mr. Demian  
24 to hear for myself what he felt went wrong and he told me that "it did not go as he had  
25 hoped." With that Mr. Demian told me he thought this would be a good time for me to seek  
26 alternative counsel and informed me he would be withdrawing from the case.  
27  
28

1  
2 195. On December 12, 2017, representing myself, I had a hearing in front of Judge  
3 Wohlfield for a Motion to Reconsider his ruling on the TRO. While I am not an attorney, I  
4 was fully prepared to argue the supporting elements of the motion that Mr. Demian had not  
5 raised and felt it would give the court the opportunity to see why I had an immediate interest  
6 in seeking court supervised protection through the TRO.  
7

8 196. I arrived at the hearing and was immediately told by Judge Wohlfield, before I could  
9 even speak, that he was denying my Motion for Reconsideration on procedural grounds. I  
10 was not allowed to say anything. Mr. Weinstein applauded the denial stating that the Writ  
11 of Mandate was due to be heard on January 26, 2017 and having a TRO granted prior to that  
12 hearing was unnecessary. What I was not given the opportunity to say was that the reason I  
13 was there and representing myself was that if the court didn't intervene on my behalf  
14 immediately, the harm that Mr. Geraci could cause me would be done before that hearing.  
15

16 197. When I walked out of the courtroom I felt like the world was closing in around me. I  
17 started feeling dizzy and had a hard time standing or even speaking. I thought it was  
18 temporary but since I was prone to seizures, I decided to go the hospital and have myself  
19 checked out. I did and was told was that I had suffered a Transient Ischemic Attack  
20 (TIA). A TIA is a mini-stroke which is caused when stress creates loss of blood to the  
21 brain. I am hoping I don't ever have another one of these as I felt helpless in its grasp.  
22

23 198. I did not agree with Judge Wohlfield's decision. I did not feel that he had considered  
24 the elements which supported my urgency to be granted the TRO. In the interest of  
25 protecting myself from the harm Mr. Geraci was capable of inflicting on me, I had no choice  
26 but to seek an Appellate Court ruling on my TRO motion wherein they would consider all  
27 the facts and supporting evidence that Judge Wohlfield had not considered when denying me  
28 that protection.

1  
2 199. On December 18, 2017 I filed a Notice with the Court that I will be appealing Judge  
3 Wohlfield's decision and will be requesting that the matter be expedited due to its urgency.

4 200. With everything I have been going through legally, the stresses that I find myself  
5 under have affected my health and those opportunities that I might have pursued for myself,  
6 my loved ones and my employees. I no longer sleep through the night and have anxiety  
7 attacks that are difficult to manage. I have had heart palpitations. I find that my focus and  
8 attention to the details necessary to run my business have suffered. My personal and  
9 professional relationships are in jeopardy.  
10

11 201. In addition to the legal issues I'm dealing with, I have tried to maintain my Inda-Gro  
12 lighting business by introducing a new LED Grow light to our lineup for which I have  
13 applied for a provisional patent. Developing this new light and the software and controls  
14 that will run it have been somewhat cathartic in that it takes my mind off of the legal issues  
15 I'm confronting but by no means am I able to give Inda-Gro the attention it deserves when  
16 I'm consumed with the stresses I face daily as a result of Mr. Geraci and the pressure he has  
17 put on me.  
18  
19

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

22 DATED: 1-20-18

  
DARRYL COTTON



1 I, DON CASEY, hereby declare as follows:

2 I have personal knowledge of the facts I state below, and if I were to be called as a  
3 witness, I could competently testify about what I have written in this declaration.

- 4 1. In my career, I have been a collegiate basketball coach at Temple University, an NBA  
5 coach for the Los Angeles Clippers and the New Jersey Nets. I have also worked as an  
6 assistant coach with the Chicago Bulls (1982–1983) and Boston Celtics (1990–1996).
- 7 2. From 1993-2000 I was the vice-chairman of the President's Council on Physical Fitness  
8 and Sports and was personally **appointed by President Clinton**.
- 9 3. Currently I am a board member and National Trustee for the ALS Foundation<sup>1</sup>.
- 10 4. After meeting and befriending Mr. Cotton, he has been working extensively on  
11 developing a very specifically genetically engineered strain of cannabis designed for  
12 those suffering from ALS.
- 13 5. He is calling this strain the "Casey Cut" as a tribute to my mother who died of ALS in  
14 1969; it was a joint endeavor to help those suffering from this neurodegenerative  
15 disease.
- 16 6. Because of Darryl's efforts to aid those with ALS, I strongly support him and 151  
17 Farms. I have brought ALS patients to whom Darryl has provided cannabis products at  
18 no charge in an attempt to alleviate their pain and suffering.
- 19 7. The goal of developing a highly concentrated cannabidiol strain of cannabis has the  
20 purpose of helping alleviate the pain and adverse effects ALS patients contend with  
21 while working to help repair the underlying neurodegenerative conditions that these  
22 patients suffer from.
- 23
- 24
- 25
- 26

27 <sup>1</sup> Based in Washington, D.C., the ALS Association coordinates the federal and state advocacy programs, works  
28 directly with Congress, the White House, other federal agencies and other national organizations, and provides  
training and support for ALS Association advocates.

1 8. About a year ago Darryl told me he was selling his property for 2 million dollars. Now, I  
2 am finding out that not only is that not happening, there is litigation holding up his  
3 business prospects.  
4

5 I declare under penalty of perjury under the laws of the State of California that the foregoing  
6 is true and correct.

7 DATED: February 22, 12

Don Casey

1 I, MICHAEL KEVIN MCSHANE, declare:

- 2 1. I have personal knowledge of the facts I state below, and if I were to be called as a  
3 witness, I could competently testify about what I have written in this declaration.
- 4 2. I have been HIV positive for over 30 years.
- 5 3. In 2009 I developed debilitating skin cancer. That is when I became familiar with the  
6 medical cannabis community.
- 7 4. I have elected to treat my HIV and cancer exclusively through using cannabis oil extracts  
8 and other cannabis-based derivatives.
- 9 5. Mr. Cotton has wonderful ethics and his moral compass is unparalleled. Having become  
10 familiar with people of all walks of life in the marijuana industry, I find Mr. Cotton to be in  
11 stark contrast to many of the characters I have come across. I have found most  
12 establishments are not actually patient-oriented and some seem borderline criminal. Greed,  
13 profit and self-serving platitudes are the rule despite the reality of patients' needs and the  
14 purpose behind Prop. 215 and the spirit behind people's support for Prop 64.
- 15 6. Let me be clear, *Mr. Cotton is fully committed to helping people* with a laser-focus on the  
16 *medicinal purposes* and benefits of cannabis specifically tailored to increasing the  
17 therapeutic benefits to those of us with chronic and terminal diseases.
- 18 7. Just this week I have had a severe flare up with my cancer and I don't know if I will be alive  
19 long enough to hear the results of Mr. Cotton's case. But what I do know is that Mr. Cotton  
20 and his dedication to helping people that are suffering is genuine and the relief that he helps  
21 provide is a comfort and a service that at this time hospitals simply do not provide.

22 I certify under penalty of perjury under the laws of the State of California that the foregoing  
23 is true and correct:

24  
25 1/4/2018  
26 (Date)

/s/Michael McShane  
(MICHAEL KEVIN MCSHANE)



1 I, Shawna Salazar, hereby declare:

- 2 1. **I have personal knowledge of the facts I state below, and if I were to be called as a**  
3 **witness, I could competently testify about what I have written in this declaration.**
- 4 2. I met Darryl in 1999 when he was the proprietor of Fleet Electrical and I was hired to work  
5 as a dispatcher for his company.
- 6 3. Over time I got to know Darryl on a personal level and we became close to the point where  
7 we began dating and our relationship evolved into a personal one.
- 8 4. I am proud to say that we have now been in an exclusive personal relationship for over 17  
9 years and I continue to work with him in his business ventures as my assistance is required.
- 10 5. As I know Darryl on both a personal and professional level, I am in a unique position to  
11 speak to how passionate he is in any venture he decides to pursue.
- 12 6. In 2010 he began focusing much of his attention and resources towards plant lighting and  
13 opened Inda-Gro, which manufactured induction grow lights. I saw that company grow in  
14 size and stature until he recognized that induction technology was being phased out and  
15 decided to expand the product line into LED plant lighting.
- 16 7. It has always been personally rewarding to see Darryl create these products and see his pride  
17 in knowing that the plant quality is improved based on his designs. This is especially true  
18 when it comes to medical cannabis since Darryl uses it personally to help combat his own  
19 condition of nocturnal seizures.
- 20 8. Many people have toured 151 Farms. This farm was created to not only prove our new  
21 products but to show the community how energy and water savings can be employed in an  
22 urban garden environment. Darryl's dream has always been to take this model to a larger  
23 audience and expand to a larger facility.
- 24 9. When Darryl told me in September 2016 about the property being sold to a businessman  
25 named Larry Geraci, I was at first hesitant as to what the impact would be on our business  
26  
27  
28

1 and the employees that worked here. Darryl relieved me of those concerns when he told me  
2 that with the Geraci purchase we not only would we have a good deal on the property but  
3 that because Geraci was involved in other real estate ventures he would help to make us  
4 aware of a larger property that would serve to meet our future needs. Sadly, that has not  
5 been the case.

6 10. The stresses that the failed Geraci negotiations and subsequent litigation have put Darryl  
7 under have been indescribably hard to watch.

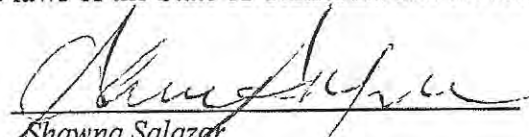
8 11. I have seen Darryl go from a happy, outgoing person to one who at times will stare into  
9 space and mumble to himself. He is short tempered and not available to those who used to  
10 be closest to him.

11 12. He spends most of his days and even nights at the office trying to fix what he sees as beyond  
12 his control.

13 13. He is fearful of losing everything he has worked for and nothing anyone says or does can  
14 bring him any consolation. Frankly, it is a horrible thing to watch and it has led to us not  
15 having much of a relationship any more.  
16  
17

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

21 DATED: 1/20/18

  
Shawna Salazar

1 I, SEAN MAJOR, declare as follows:

- 2 1. I was a sergeant in the United States Marine Corps. I served from 2009 to 2016 including a  
3 tour in Afghanistan.
- 4 2. I suffered 4 major traumatic brain injuries while in the service and currently suffer from  
5 PTSD.
- 6 3. Currently, I am prescribed more than 20 different variations of pills. Of all the medications,  
7 I find the holistic approach to reap the most benefits. I find far more relief in medical grade  
8 cannabis geared towards increasing the yield of cannabinoids proven to have a multitude of  
9 medical benefits rather than just high THC to get people "high." This type of medicine is  
10 what I see as the most promising future area for further medical and therapeutic research.
- 11 4. I believe high-CBD medical cannabis is safer and more effective for veterans' recuperation  
12 than pharmaceutical options, and both I, and Darryl Cotton want to raise awareness and  
13 foster change.
- 14 5. In October 2015 I became the first, *and to-date only*, active duty Marine to be approved to  
15 use cannabis to treat my medical conditions. Since being granted an approval to use  
16 cannabis cultivation as a way to help combat the stresses that I have dealt with after having  
17 returned from active service I have been devoted to spreading awareness.
- 18 6. Currently, I am in production of a documentary television program that is to be distributed  
19 through Netflix.
- 20 7. I have had multiple news outlets write articles about me and I speak nationally about  
21 organically grown cannabis, the Veteran community, and the positive benefits of cannabis  
22 on medical/psychological conditions that affect our wounded warriors.
- 23 8. I became acquainted to Darryl Cotton and 151 Farms after hearing the positive things Mr.  
24 Cotton is doing in developing sustainable gardens that combine healthy foods to be donated  
25 to the community with hops for San Diego's vibrant beer community and medical grade  
26  
27  
28



1 cannabis for people like myself with legitimate medical needs that are not being adequately  
2 addressed by big pharmaceutical companies.

3 9. I reached out to Darryl and 151 Farms as a way to get involved with their work in growing  
4 medical cannabis for those who require it.

5 10. I have seen first-hand the care Mr. Cotton puts into his passion, which is helping people  
6 understand and receive, natural, non-pharmacological healing.

7 11. Mr. Cotton uses a sustainable method of using a "closed system" irrigation involving fish,  
8 to plants (cannabis and vegetables) and he donates the grown food back to poor  
9 communities in San Diego.

10 12. For all the above reasons I see what Mr. Cotton is doing as a service to his community and  
11 he is setting an example to the rest of the state on how card-carrying medical  
12 recommendation patients should be prioritized while also being socially engaged and aware.  
13

14  
15 **I declare under penalty of perjury under the laws of the State of California that the**  
16 **foregoing is true and correct.**

17  
18 DATED: January 22, 2018

/s/Sean Major  
Sean Major

1 I, Cindy Jackson, hereby declare as follows:

2 **I have personal knowledge of the facts I state below, and if I were to be called as a witness,**  
3 **I could competently testify about what I have written in this declaration.**

- 4 1. I have worked as a bookkeeper for Darryl Cotton since 1997. In that time, I have seen him  
5 grow from a small, sole proprietor, electrical contractor employing around 6 employees to  
6 becoming an incorporated, Union-shop employing more than 90 electricians and a  
7 successful equipment rental company.
- 8 2. When the economy slowed down in the mid-2000s the need for both companies' products  
9 and services dwindled. As a result, Darryl sold off the rental equipment and began to focus  
10 on his other passion: plant lighting.
- 11 3. In 2010, Darryl created Inda-Gro, and became a manufacturer of induction grow lights. His  
12 focus was on creating lights and controls to improve plant response in both quality and  
13 yield.
- 14 4. This company was especially important to him as it relates to cannabis cultivation since he  
15 has needed it to combat some of his own personal medical conditions.
- 16 5. In addition to being a businessman of the highest ethical standards, Darryl has always been  
17 interested in patients' rights and their access to medical cannabis. It is for this reason he has  
18 invested countless hours and money into seeing that all those who require fresh food and  
19 medical grade cannabis have the tools and the legal resources to do so.
- 20 6. Having known Darryl for as long as I have, I can honestly say that the Darryl I used to know  
21 is not the same person that I see today.
- 22 7. Ever since Darryl met Larry Geraci, he was led to believe that the purchase of the property  
23 at 6176 Fed. Blvd. would help Darryl expand operations and pursue greater opportunities.
- 24 8. The current legal entanglements with Mr. Geraci have caused Darryl and those of us who  
25 have been loyal to him and his causes stresses that are impossible to fully describe.
- 26  
27  
28

1 9. These extreme stresses, brought on by this litigation, are causing Darryl great physical,  
2 emotional, and financial harm that affects his ability to conduct business or plan on future  
3 endeavors. If there is any remedy that the court might provide to protect Mr. Cotton and his  
4 rights within the law, I would pray that the court do so.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
6 and correct.

7 DATED: \_\_\_\_\_

1/22/18

8   
Cindy Jackson




1 I, James Whitfield, hereby declare:

- 2 1. **I have personal knowledge of the facts I state below, and if I were to be called as a**  
3 **witness, I could competently testify about what I have written in this declaration.**
- 4 2. I am 67 years old, a Navy veteran and I served my country for 20 years, 3 months and 14  
5 days. As a result of my military service, I suffer from severe back, neck and leg pain.
- 6 3. Pharmaceutical drugs have not been at all useful in the repair or recovery of my painful  
7 conditions.
- 8 4. The one thing that does provide me with a great deal of relief is the regular use of  
9 organically grown medical cannabis which I began using rather than the opiates that had  
10 been prescribed to me. All the painkillers I was given were addictive and kept me from  
11 being able to maintain a solid and consistent coherency.
- 12 5. I have known Darryl Cotton and 151 Farms for nearly 20 years now. I support their ongoing  
13 efforts to educate others on the importance of having fresh food and cannabis available to  
14 those who seek it.
- 15 6. It has been extremely important for me to have access to fresh food and genetically specific  
16 cannabis to help alleviate my pain and suffering. As such, cannabis remains an important  
17 lifeline for me on a daily basis.
- 18 7. I fully support Darryl Cotton and his efforts to promote laws, policies and regulations that  
19 serve to protect patients' rights and access to medical-grade cannabis as a treatment for  
20 medical, physical and psychological conditions.

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

23 DATED: 1/12/18

24   
James Whitfield

1 I, Michael Scott McKim, hereby declare:

- 2 1. **I have personal knowledge of the facts I state below, and if I were to be called as a**  
3 **witness, I could competently testify about what I have written in this declaration.**
- 4 2. I am a San Diego native.
- 5 3. I am a heavy equipment operator and have been a cannabis farmer for 20 years.
- 6 4. I have been the senior farm manager at many licensed mid-to-large cannabis farms in  
7 Northern California. As such, I have gained tremendous insight into the evolving business of  
8 cannabis as well as how the plant is grown and processed.
- 9 5. I left Northern California to look for likeminded farmers that value organically grown plants  
10 that would not potentially harm the medical cannabis patient as I became aware that the  
11 industry is becoming increasingly about making a profit and that plant quality and patients'  
12 needs are no longer priorities.
- 13 6. I was introduced to Darryl Cotton and 151 Farms in August 2017. I was so impressed with  
14 his passion, education and vision that I immediately offered to help him in any way I could.
- 15 7. Darryl has worked tirelessly in promoting these urban farms as a way to educate the  
16 community about the benefits of organically grown food, hops and medicine.
- 17 8. Darryl is a man of his word and he is driven by a sense of purpose that you rarely see in  
18 people. It is his vision to expand 151 Farms to larger markets that has given me a good  
19 sense of my own future opportunities.
- 20 9. I can see that Darryl is in a stressful legal battle with someone who apparently seeks to take  
21 advantage of Darryl by acquiring his property and benefitting from the notoriety that Darryl  
22 has created with 151 Farms in the urban farming community.
- 23 10. Recently Darryl has become extremely stressed out and not as available as he used to be.  
24 Clearly something must be done and I hope that there are legal mechanisms that can protect  
25 Darryl and those of us who share his passion and dreams.
- 26  
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28

1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct.

3 DATED: 1-20-18

  
Michael Scott McKim



1 I, Cheryl Morrow, hereby declare:

2 I have personal knowledge of the facts I state below, and if I were to be called as a  
3 witness, I could competently testify about what I have written in this declaration.

- 4 1. I am Editor-in-Chief of the San Diego Monitor News and have proudly been a consistent  
5 community supporter for 27 years. I have witnessed numerous valued activities with 151  
6 Farms personally and have become a strong advocate.
- 7 2. Since Darryl Cotton and 151 Farms have come to my awareness, I have frequented the farm  
8 and have recommended the farm's usage to many San Diego residents with health issues. It  
9 only makes sense to support a system that gives alternatives of fresh food and environmental  
10 solutions as well as promoting health benefits to a community that has been ravaged by poor  
11 health options and poor food options. The public has grown dependent on our sound  
12 wellness options in pursuit of a healthier lifestyle and I have knowledge of these options as  
13 an urban garden advocate along with my many years in the cosmetics industry.
- 14 3. I have grown to trust Darryl Cotton with his superior knowledge on medical cannabis law  
15 and I respect his abiding by state and local government requirements. Ethically speaking, I  
16 feel that 151 Farms is the best model in the country and should be considered a model for all  
17 cannabis endeavors. Individuals who seek interest in this industry should seek out what  
18 Darryl Cotton has done with his undying courage and extremely time-consuming devotion.
- 19 4. I have seen many changes in growing techniques over the last few years and 151 Farms is  
20 the product of many farms that are adding value to their communities all over the world. I  
21 have seen people from abroad take tours of the farm who have been astounded by 151  
22 Farms' sophistication while delivering compassion for its patients.
- 23 5. It is obvious that the legal actions have taken a toll on Darryl's passion regarding the day to  
24 day operations of the farm. However, Darryl is a model citizen in my opinion. My entire  
25 family has great respect for those who roll up their sleeves to be a part of the solutions and  
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not just problems. 151 Farms is a community asset. I have gained a wealth of knowledge about my own health preservation, so in saying all of this... God helps those who help themselves.

**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

DATED: 1-22-2018

/s/ Cheryl Morrow  
Cheryl Morrow