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11
12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

14 DARRYL COTTON, an individual,

15 Petitioner/Plaintiff,

16 v.

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

19 Respondents/Defendants.

20 REBECCA BERRY, an individual; LARRY
21 GERACE, an individual, and ROES 1 through
22 25,

23 Real Parties In Interest.

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

Judge: Hon. Eddie Sturgeon

**REAL PARTIES IN INTEREST, LARRY
GERACI AND REBECCA BERRY,
MEMORANDUM OF POINTS AND
AUTHORITIES IN 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

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1 Real Parties in Interest, LARRY GERACI (hereafter "Geraci") and REBECCA BERRY
2 (hereafter "Berry"), submit these points and authorities in opposition to the ex parte application filed by
3 Petitioner, DARRYL COTTON (hereafter "Cotton") for issuance of an alternative writ of mandate or
4 for an order setting an expedited hearing date and briefing schedule.

5 **I. INTRODUCTION**

6 On October 6, 2017, Cotton filed a verified petition pursuant to C.C.P. § 1085 seeking an
7 alternative writ of mandate and a peremptory writ of mandate directing respondent City of San Diego,
8 to: (1) recognize Cotton as the sole applicant with respect to Conditional Use Permit Application—
9 Project No. 52066 (the "CUP Application"¹) for a Conditional Use Permit ("CUP") to operate a
10 Medical Marijuana Consumer Cooperative ("MMCC") at 6176 Federal Boulevard, San Diego,
11 California 92105 (the "Property"); and (2) process the CUP Application with Cotton as the sole
12 applicant. In the alternative, Cotton seeks an order to show cause directed to the City as to why the
13 Court should not issue such a writ. In his petition Cotton names Larry Geraci and Rebecca Berry as
14 real parties in interest.

15 On October 30, 2017, Cotton filed the instant ex parte application seeking the ex parte issuance
16 of an alternative writ of mandate or for an order setting an expedited hearing date and briefing schedule
17 on the petition.

18 **II. SUMMARY OF REAL PARTIES IN INTEREST POSITION RE EX PARTE**
19 **APPLICATION**

20 The court should deny the ex parte relief requested. There is a prior action currently pending
21 before Judge Wohlfeil between Larry Geraci and Darryl Cotton (the "Geraci Lawsuit"), namely a
22 lawsuit in which Geraci has sued Cotton for, among other things, breach of contract and specific
23 performance of a written agreement entered into between them on November 2, 2016 for the purchase
24

25 ¹ In his petition Cotton refers to the CUP Application as the "Cotton Application." This misleading reference is consistent
26 with his wrongful attempt to hijack the application. Berry was the Applicant. Cotton and Berry did not have a principal-
27 agent relationship and Berry did not submit the CUP Application on his behalf. Rather, Berry had a principal-agent
28 relationship with Geraci. ~~Berry submitted the CUP Application on behalf of Geraci who had entered into a written~~
~~agreement with Cotton for the purchase of the Property.~~ Thus, Berry was and is a "person who can demonstrate a legal
right, interest, or entitlement to the use of the real property" within the meaning of the Municipal Code. (SDMC, §§
112.0102, subd. (a), 113.0103 [defining applicant].)

1 and sale from Cotton to Geraci of the Property (the "Nov 2nd Written Agreement"). The CUP
2 Application that is the subject of the instant writ petition is for that Property. In the prior action, set for
3 trial on May 11, 2018, the central issue is the validity and enforceability of that Nov 2nd Written
4 Agreement. That is also the central issue in the instant writ petition as it provides the basis for the
5 Geraci/Berry's contention that Berry is an **"other person who can demonstrate a legal right,
6 interest, or entitlement to the use of the real property subject to the [CUP] application."** (SDMC,
7 §§ 112.0102, subd. (a)(3), 113.0103 [defining applicant].) This writ petition is an attempt to hijack the
8 CUP Application validly and properly submitted by Berry, on behalf of Geraci, to the City of San
9 Diego, which application has been in process for approximately twelve (12) months already and for
10 which Geraci has already incurred expenses in excess of \$150,000. It is also an attempt to circumvent
11 the prior ongoing action before Judge Wohlfeil set for trial on May 11, 2018.

12 Specifically, the Real Parties in Interest submit that:

13 1. Based on the earlier filed related action—the Geraci Lawsuit—the Petition should be
14 denied without prejudice and transferred to Judge Wohlfeil.

15 2. If the court does not transfer this matter to Judge Wohlfeil, then the Court should deny
16 any ex parte attempt to obtain the issuance of a writ of mandate. The matter needs to be fully heard
17 and Real Parties in Interest should be given adequate time to prepare for the hearing or trial. To do
18 otherwise would be a denial of due process and fundamental fairness.

19 3. Petitioner has requested an order setting an expedited hearing on the Petition for
20 November 14, 2017, and have proposed that Real Parties in Interest's opposition papers be filed on
21 November 7, 2017, only seven (7) calendar days after this ex parte hearing. As discussed below,
22 Petitioner indicated to the City as far back as May 15, 2017, that he intended to seek this relief. **And**
23 **then he waited five (5) months to do so!** Now he is asking that Real Parties in Interest have only one
24 (1) week to put together its opposition. That is totally inadequate and fundamentally unfair. Given the
25 current status of the CUP Application, which has not even been set for public hearing let alone
26 approved, the hearing on the Petition should set no earlier than February 2018.

27 4. Petitioner argues that an extremely expedited hearing is necessitated as a result of the
28 change in the law taking effect on January 1, 2018. That argument is a red herring. The California

1 State Licensing program that begins January 1, 2018 is not applicable to this project until the City of
2 San Diego approves the project. The state Bureau of Cannabis Control ("BCC") has indicated that it
3 will start issuing temporary licenses January 1, 2018. (<http://bcc.ca.gov/licensees/index.html>). In
4 order to be eligible for a temporary state license, the applicant must have *inter alia* "a copy of a valid
5 license, permit, or other authorization, issued by a local jurisdiction, that enables the applicant to
6 conduct commercial cannabis activity at the location requested for the temporary license." (Cal. Bus.
7 & Prof. Code, § 26050.1(a)(2).) The only applicants that will get priority for state licensing shall be
8 applicants that operated in compliance with city and state laws prior to September 1, 2016. (Cal. Bus.
9 & Prof. Code, § 26305.2.) As such, there is no harm to Mr. Cotton as a license may only be issued
10 from the state after the City has approved a project.

11 5. Moreover, as conceded in petitioner's points and authorities, a CUP runs with the land.
12 If the CUP Application submitted by Berry is ultimately approved, *then that will benefit, not harm,*
13 *Cotton, should Cotton ultimately prevail on the merits regarding Nov 2nd Written Agreement that is*
14 *being litigated in the Geraci Lawsuit.* What Cotton really seeks by his writ petition is to prevent
15 Geraci/Berry from obtaining approval of a CUP and thereby prevent satisfaction of the condition
16 precedent to Geraci acquiring the Property from Cotton, thereby freeing Cotton to close the more
17 lucrative deal he has made with another buyer, Richard Martin II, for the purchase and sale of the
18 Property.

19 As it relates to the merits of the Petition itself, Real Parties in Interest will be arguing that:

20 1. Petitioner has failed to exhaust his administrative remedies. He has failed to apply for a
21 separate CUP Application, which the City has said it would concurrently process. Until the City
22 makes a final determination approving the Berry CUP Application or any separate CUP application
23 filed by Cotton, Cotton has not exhausted his administrative remedies and the matter is not ripe for
24 determination.

25 2. Petitioner can point to no irreparable harm he will suffer by denial of the writ of
26 mandate. As already noted, a CUP runs with the land. If the CUP Application submitted by Berry
27 is ultimately approved, *then that will benefit, not harm, Cotton, should Cotton ultimately prevail on the*
28 *merits regarding Nov 2nd Written Agreement that is being litigated in the Geraci Lawsuit.* As also

1 already noted, the change in the law effective January 1, 2018, does not create any harm to Mr.
2 Cotton, let alone irreparable harm, as a license may only be issued from the state after the City has
3 approved a project.

4 3. Petitioner argues that the City has a ministerial duty to process the CUP Application
5 with Cotton as the sole applicant and, thus, to replace Berry with him or otherwise recognize him as the
6 sole applicant. That argument is flawed, however, because Cotton cannot demonstrate that he was the
7 only person who possessed the right to use the Property. The City's ordinances provide that the persons
8 "deemed to have the authority to file an application [are]: [¶] (1) The record owner of the real property
9 that is the subject of the permit, map, or other matter; [¶] (2) The property owner's authorized agent; or
10 [¶] (3) Any other person who can demonstrate a legal right, interest, or entitlement to the use of
11 the real property subject to the application." (SDMC, §§ 112.0102, subd. (a), 113.0103 [defining
12 applicant]). Thus, the Municipal Code makes clear that the "record owner" is not the only person
13 deemed to have authority to file an application. The evidence will show that Cotton and Berry did not
14 have a principal-agent relationship and Berry did not submit the CUP Application on his behalf.
15 Rather, Berry had a principal-agent relationship with Geraci. Berry submitted the CUP Application on
16 behalf of Geraci who had entered into a written agreement with Cotton for the purchase of the Property.
17 In other words, Berry can demonstrate a "legal right, interest, or entitlement to the use of the real
18 property subject to the application" (SDMC, §§ 112.0102, subd. (a)(3)). Berry was and is entitled to
19 pursue the CUP Application on behalf of her principal, Geraci, who has a contractual interest in the
20 Property by virtue of his agreement with Cotton to purchase the Property.

21 **III. A RELATED ACTION IS PENDING BEFORE JUDGE WOHLFEIL**

22 For the last seven months another action has been ongoing between Larry Geraci and Rebecca
23 Berry, on the one hand, and Darryl Cotton, on the other hand, arising out of the same events and
24 transactions which underlie the instant petition. That ongoing lawsuit, filed March 21, 2017, is
25 captioned Larry Geraci v. Darryl Cotton, Case No. 37-2017-0010073-CU-BC-CTL, and is assigned to
26 Judge Wohlfeil. (See Complaint filed in that pending action, Exhibit 1 to the Real Parties in Interest's
27 Notice of Lodgment in Opposition to the Petition for Writ of Mandate (hereafter "RPI NOL").
28 Petitioner Cotton did not file the required Notice of Related Action when filing the instant Petition for

1 Writ of Mandate.

2 In the lawsuit, Geraci has sued Cotton for, among other things, breach of contract and specific
3 performance of a written agreement entered into on November 2, 2016, for the purchase and sale of the
4 Property that is the subject of the CUP Application. Cotton has filed a Cross-complaint asserting
5 various claims for damages against Cotton and a claim for declaratory relief against Berry. The case is
6 set for trial on May 11, 2018.

7 **IV. THE PETITION SHOULD BE DENIED**

8 A. Factual Background

9 Darryl Cotton is the fee owner of the Property. On November 2, 2016, following negotiations,
10 ~~Darryl Cotton and Larry Geraci signed a written and notarized agreement for the sale and purchase of~~
11 the Property (the "Nov 2nd Written Agreement"). (Decl. of Larry Geraci, para. 5; and Nov 2nd Written
12 Agreement, Exhibit 2 to RPI NOL.) The Nov 2nd Written Agreement is straightforward and
13 unambiguous, and its states as follows:

14 11/02/16

15 Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

21 The agreement contains all the material terms and conditions of an agreement to sell and purchase real
22 property. It identifies the parties, the real property, and the price. The sale is unambiguously
23 conditioned on obtaining approval of a CUP to operate a marijuana dispensary at the site.

24 Geraci paid Cotton the \$10,000 earnest money and diligently proceeded to take steps to apply
25 for and obtain approval of the requisite CUP. Geraci and Cotton intended that Geraci apply for and
26 obtain the CUP and that Geraci bear all the costs and expenses of doing so. To obtain the CUP,
27 Rebecca Berry, Geraci's assistant and authorized agent, would apply for and be the responsible
28 financial party for the CUP permit application process. (Decl. of Larry Geraci, paras. 5 and 6.)

1 All of this was known and intended by Cotton. On October 31, 2016, immediately before and
2 in anticipation of signing the Written Agreement, Cotton signed an Ownership Disclosure Statement
3 (Form DS-318), one of the many forms that Berry would be required to file with her CUP application.
4 The purpose of the Ownership Disclosure Statement is to identify all persons with an interest in the
5 property *and must be signed by all persons with an interest in the property.* (Decl. of Larry Geraci,
6 para. 5; Decl. of Abhay Schweitzer, para. 5; and Ownership Disclosure Statement, Exhibit 3 to RPI
7 NOL. In Part 1, above the signatures, the document reads:

8 By signing the Ownership Disclosure Statement, the owner[s] acknowledge that an application
9 for a permit, map or other matter, as identified above, will be filed with the City of San Diego
10 on the subject property, with the intent to record an encumbrance against the property. Please
11 list below the owner(s) and tenant(s) (if applicable) of the above referenced property. **The list**
12 **must include the names and addresses of all persons who have an interest in the property,**
13 **recorded or otherwise,** and state the type of property interest (e.g., tenants who will benefit
14 from the permit, all individuals who own the property). A signature is required of at least one of
15 the property owners. Attach additional pages if needed. A signature from the Assistant
16 Executive Director of the San Diego Redevelopment Agency shall be required for all project
17 parcels for which a Disposition and Development Agreement (DDA) has been approved /
18 executed by the City Council. Note: The applicant is responsible for notifying the Project
19 Manager of any changes in ownership during the time the application is being processed or
20 considered. Changes in ownership are to be given to the Project Manager at least thirty days
21 prior to any public hearing on the subject property. Failure to provide accurate and current
22 ownership information could result in a delay in the hearing process.

23 Thus, Cotton's signature as owner was required as was Berry's signature as she had an interest in the
24 property as the authorized agent on behalf of Geraci, who possessed an agreement to purchase the
25 Property.

26 The November 2nd Written Agreement to sell the Property to Geraci is conditioned upon Geraci
27 obtaining approval of a CUP permit. The property has substantially less value without approval of a
28 CUP to operate a MMCC (marijuana dispensary). Geraci paid the \$10,000 deposit and ever since has
diligently pursued a CUP application through his agent, Rebecca Berry. He is 12 months into that
process and has expended well over \$150,000 in connection with that application. (Decl. of Larry
Geraci, paras. 15 and 18; Decl. of Abhay Schweitzer, paras. 3 through 17.) If a CUP is approved, then
Geraci will tender the \$790,000 balance of the purchase price as he is obligated to do under the
November 2nd Written Agreement.

Geraci has been and is financially responsible for all costs and expenses incurred in connection
with obtaining a CUP—a lengthy and expensive process. If a CUP is approved and the Property

1 transferred to him, then he will incur all the further costs of the development and construction of an
2 MMCC facility at the Property.

3 Following execution of the Nov 2nd Written Agreement the parties continued to negotiate
4 regarding whether Cotton would have any continuing interest and involvement in the day-to-day
5 operations of the MMCC should the CUP be obtained by Geraci and the new dispensary constructed.
6 Cotton demanded more than Geraci was willing to give and the parties never reached an agreement
7 whereby Cotton would be involved in the business should it develop to fruition. Unhappy that the
8 parties could not reach an agreement by which Cotton would be involved and compensated for his
9 involvement in the operation of the dispensary, Cotton communicated to Geraci that he would not
10 perform and began taking actions aimed at interfering with Geraci/Berry's attempts to obtain a CUP.
11 (Decl. of Larry Geraci, paras. 8 through 13.)

12 On March 21, 2017, in response to Cotton's anticipatory breach and breach of the implied
13 covenant of good faith and fair dealing, Geraci filed the Geraci Lawsuit against Cotton asserting claims
14 for breach of contract, ~~breach of the covenant of good faith and fair dealing, specific performance, and~~
15 ~~declaratory relief.~~ (Decl. of Larry Geraci, para. 14; and Complaint, Exhibit 1 to RPI NOL.) Cotton has
16 answered and filed a cross-complaint seeking damages on various claims against Geraci and seeking
17 declaratory relief only as against Berry. Berry has answered the Second Amended Cross-Complaint.
18 Geraci's demurrer to the ~~Second~~ Amended Cross-Complaint will be heard November 3, 2017. The
19 case is set for trial on May 11, 2018.

20 Prior to the filing of the Geraci Lawsuit, Cotton had been negotiating with other potential
21 buyers of the Property to see if he could get a better deal than he had agreed to with Geraci. And
22 Cotton's document production in the Geraci Lawsuit has revealed that on March 21, 2017, Cotton had
23 already entered into a real estate purchase and sale agreement to sell the Property to another person,
24 Richard John Martin II (the "Martin Sale Agreement"). ~~That agreement was amended on April 15,~~
25 ~~2017, and again on May 12, 2017.~~ The key terms of the agreement include: a) Martin will pay Cotton
26 a purchase price of \$2,000,000 for the Property; b) Martin has paid non-refundable deposits of
27 \$150,000 to Cotton to be applied to the purchase price; and c) the closing of the sale and payment of
28 the balance of the purchase price to Cotton is conditioned upon a favorable outcome in the *Geraci v.*

1 *Cotton* lawsuit. (Decl. of Larry Geraci, para. 16; Decl. of Michael Weinstein, para. 8; and Martin Sale
2 Agreement, Exhibit 4 to RPI NOL.)

3 By virtue of the agreement with Martin, Cotton has a “million reasons” to try to get out of the
4 November 2nd Written Agreement with Geraci. If he does so, then he stands to reap an additional \$1.2
5 million because of the higher purchase price he will receive from Martin. And the agreement also
6 provides Cotton with a \$150,000 non-refundable deposit towards the purchase price which he can use
7 to finance the defense of the *Geraci v. Cotton* case as well as his own Petition for Writ of Mandate.

8 But Cotton has a problem because he has sat on his hands. Despite being fully aware of Berry’s
9 CUP Application from the outset and even after putting the City on notice on May 15, 2017, that he
10 would seek the Court’s intervention to substitute him in place of Berry as the Applicant on the CUP
11 Application, **Cotton has waited another nearly five (5) months before his October 6, 2017, filing of**
12 **his Petition for Writ of Mandate seeking that very court intervention he had advised the City was**
13 **coming.** (Weinstein Decl., paras. 9 and 10; and May 15, 2017, email from Cotton to the City, Exhibit 8
14 to RPI NOL. During that time Geraci/Berry have continued to process the CUP Application at great
15 effort and expense.

16 In addition, Cotton has never submitted his own separate CUP application to the City, as he
17 could have done months ago. Instead, Cotton has spent the last 6 months attempting to interfere with
18 and undermine the CUP Application submitted by Berry/Geraci by trying to withdraw the CUP
19 Application or to get the City to stop processing the CUP Application. The City, however, recognizing
20 under that Berry is a valid Applicant under the Municipal Code and its procedures, refused to do
21 Cotton’s bidding. After futzing around for six months to interfere with the CUP Application, on
22 September 22, 2017, Geraci’s counsel wrote the City of San Diego demanding that they substitute
23 Cotton in as the Applicant in place of Berry on the CUP Application (effectively trying to steal for
24 himself the 12 months of time and investment by Geraci into the CUP Application) or, alternatively, to
25 demand the City concurrently process his own separate CUP Application. (See Exhibit 4 to Cotton’s
26 Petition.) The City responded on September 29, 2017, and advised him that they would process his
27 separate CUP application concurrently but that if and when one of the CUP applications goes to public
28 hearing, then the other would be considered withdrawn. (Decl. of Weinstein, para. 11.) However,

1 Cotton has never filed his own separate CUP application which he could have done many months ago.
2 Cotton now realizes he is way behind Geraci/Berry and will likely lose the race to be the first to obtain
3 approval of a CUP. So in desperation Cotton now seeks to hijack Berry's CUP Application as his own

4 The current status of the CUP Application is detailed in the Declaration of Abhay Schweitzer at
5 paragraphs 8 through 17. To date the CUP Application has not yet reached the stage of a City Council
6 hearing and there has been no final determination to approve the CUP. It is expected that the earliest
7 this may occur is in February or March 2018. (Schweitzer Decl., paras. 10-17.)

8 B. Conditional Use Permits Generally

9 "A conditional use permit is administrative permission for uses not allowed as a matter of right
10 in a zone, but subject to approval. (Cal. Zoning Practice (Cont.Ed.Bar 1996) Types of Zoning Relief, §
11 7.64, p. 299.) The issuance of a conditional use permit may be subject to conditions. (*J-Marion*
12 *Company, Inc. v. County of Sacramento* (1977) 76 Cal.App.3d 517, 522, 142 Cal.Rptr. 723.) A
13 conditional use permit regulates land, not individuals. (§ 65909.)" (*Sounheim v. City of San Dimas*, 47
14 Cal.App.4th 1181, 1187 (1996)

15 Conditional use permits "run with the land." (*County of Imperial v. McDougal* (1977) 19 Cal.3d
16 505, 510.) As stated in *Sounheim v. City of San Dimas*, *supra*, 47 Cal.App.4th at 1188: "Conditions of a
17 permit run with the land, once the benefits of the permit have been accepted. (*Ojavan Investors, Inc. v.*
18 *California Coastal Com.* (1994) 26 Cal.App.4th 516, 526, 32 Cal.Rptr.2d 103.) Subsequent owners of
19 the land have no greater rights than those of the owner at the time the conditional use permit was
20 issued. (*County of Imperial v. McDougal*, *supra*, 19 Cal.3d at p. 510, 138 Cal.Rptr. 472, 564 P.2d 14;
21 *Ojavan Investors, Inc. v. California Coastal Com.*, *supra*, 26 Cal.App.4th at p. 527, 32 Cal.Rptr.2d
22 103.)."

23 C. Writs of Mandate Generally

24 Under Code of Civil Procedure section 1085, subdivision (a), the trial court may issue a writ of
25 mandate "to any ... person ... to compel the performance of an act which the law specially enjoins, as a
26 duty resulting from an office, trust, or station, ~~or to compel the admission of a party to the use and~~
27 enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully
28 precluded by that ... person."

1 “A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for
2 compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court
3 reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine
4 whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support,
5 contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to
6 follow the procedure and give the notices the law requires. [Citations.] ‘Although mandate will not lie
7 to control a public agency's discretion, that is to say, force the exercise of discretion in a particular
8 manner, it will lie to correct abuses of discretion. [Citation.] In determining whether an agency has
9 abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable
10 minds may disagree as to the wisdom of the agency's action, its determination must be upheld.’ ”
11 (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 990, 995, fn. omitted; *California Public*
12 *Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432, 1443.)

13 D. The City Has Fulfilled Its Ministerial Duty

14 To obtain mandamus relief, Cotton must demonstrate that the City had a “clear, present,
15 ministerial duty” to perform the requested action. (*Alliance for a Better Downtown Millbrae v. Wade*
16 (2003) 108 Cal.App.4th 123, 129.) “A ministerial duty is an act that a public officer is obligated to
17 perform in a prescribed manner required by law when a given state of facts exists.” (*Ibid.*) An act is not
18 ministerial when it involves the exercise of discretion or judgment. (*County of San Diego v. State of*
19 *California* (2008) 164 Cal.App.4th 580, 596.)

20 The City must process and issue applications for conditional use permits consistent with
21 relevant laws and procedures. (SDMC, § 112.0102, subs. (a) & (b).) The City's ordinances provide
22 that the persons “deemed to have the authority to file an application [are]: [¶] (1) The record owner of
23 the real property that is the subject of the permit, map, or other matter; [¶] (2) The property owner's
24 authorized agent; or [¶] (3) **Any other person who can demonstrate a legal right, interest, or**
25 **entitlement to the use of the real property subject to the application.**” (SDMC, §§ 112.0102, subd.
26 (a), 113.0103 [defining applicant].) These ordinances make sure that conditional use permits will only
27 be granted to individuals having the right to use the property in the manner for which the permit is
28 sought. (SDMC, §§ 112.0102, subd. (a), 113.0103; see *Shell Oil Co. v. City and County of San*

1 *Francisco (1983)* 139 Cal.App.3d 917, 921; see generally 66A Cal.Jur.3d Zoning And Other Land
2 Controls § 427 [summarizing California cases].

3 Here, Cotton argues that the City has a ministerial duty to process the CUP Application with
4 Cotton as the sole applicant and, thus, to replace Berry with him or otherwise recognize him as the sole
5 applicant. However, Cotton cannot demonstrate that he was the only person who possessed the right to
6 use the Property. The Municipal Code makes clear that the "record owner" is not the only person
7 deemed to have authority to file an application. Berry independently possesses such a right, acting as
8 the agent of Geraci, with whom Cotton has entered into a written agreement for the purchase and sale
9 of the Federal Blvd. Property. As Berry can demonstrate a "legal right, interest, or entitlement to the
10 use of the real property subject to the application" (SDMC, §§ 112.0102, subd. (a)(3)), Berry can
11 pursue the CUP Application on behalf of her principal, Geraci.

12 There is no evidence that Cotton and Berry have a principal-agent relationship and that Berry is
13 his agent over whom he possesses ultimate control. Rather, the evidence is that: Cotton is currently the
14 record owner of the Property but has entered into a written agreement to sell the Property to Geraci; the
15 sale is conditional upon Geraci obtaining approval of a CUP; and Geraci has been diligently pursuing
16 the satisfaction of that contractual condition through *his* agent, Berry.

17 There is no evidence that the City has failed to follow the Municipal Code or its rules. It will
18 permit both Berry and Cotton to concurrently pursue applications for a CUP. It has notified Cotton that
19 is what it would do. Berry has not yet received a final determination yet approving the issuance of a
20 CUP. Her CUP Application has not even reached to point of a City Council hearing. Moreover,
21 Cotton has failed to file and pursue his own CUP Application. There is nothing about which Cotton
22 can complain and he has not exhausted his administrative remedies. The City has not failed to fulfill
23 any ministerial duty.

24 E. Cotton Has Not Exhausted His Administrative Remedies

25 Cotton's decision to not pursue his own separate CUP Application over the last many months
26 was his own choice ~~and that route is still available to him~~. As it stands now the City has not refused to
27 process his CUP application as none was filed and, thus, the City has not violated the Municipal Code
28 as Cotton has never been a qualified applicant. In fact, the City's September 29, 2017, letter indicates it

1 will process concurrent, separate applications until a final determination is reached on one of those
2 applications. Cotton could have done so many months ago but has simply chosen not to do so. He can
3 still file such a CUP Application and, if so, the City will begin processing it.

4 F. Cotton Should be Equitably Estopped from Obtaining the Requested Relief.

5 Berry and Geraci will also oppose the issuance of a writ of mandate under a theory of equitable
6 estoppel. In authorizing his agent, Berry, to apply for the CUP Application and doling out more than
7 \$150,000 to date on seeking a CUP, Geraci has relied on the terms and conditions of the Nov 2nd
8 Written Agreement in which Cotton agreed to sell the Property to Geraci conditioned upon the
9 obtaining of a CUP.

10 “ ‘Generally speaking, four elements must be present in order to apply the doctrine of equitable
11 estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct
12 shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so
13 intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the
14 conduct to his injury.’ ” (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165
15 Cal.App.4th 249, 257 (Golden Gate).)

16 Here, each of the elements is satisfied based on the Verified Petition alone. Cotton and Geraci
17 signed the Nov 2nd Written Agreement for the purchase and sale of the property conditioned on Geraci
18 applying for and obtaining a CUP. In reliance, Geraci, through his agent Berry, immediately pursued a
19 CUP by filing and application and processing it through the City. At present the application process is
20 12 months in and Geraci has spent in excess of \$150,000. The written agreement provided Cotton
21 would not sell to another party. Cotton was apprised of those facts. He signed the written agreement
22 and clearly knew and understood its terms (it is a half-page document with unambiguous language).
23 He intended that Geraci pursue a CUP; it was a condition of the sale. Rather than pursue his own
24 separate CUP Application, Cotton now seeks to hijack the Berry CUP Application. After getting a
25 much richer offer (by \$1.2 million) and funding to resist litigation over his contractual obligation,
26 Cotton *has waited 6 months to pursue this writ* only after he realized the City was willing to process
27 both CUP applications but that he was too far behind in the process to pursue his own CUP application.
28 Nevertheless, Cotton would still be recognized as a valid applicant by the City if he pursued his own

1 separate CUP Application. These facts establish that Cotton should be equitably estopped from
2 preventing the City from recognizing Berry as a valid applicant.

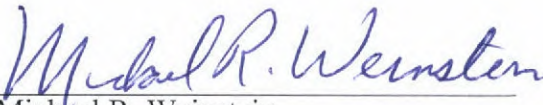
3 **V. CONCLUSION**

4 For the foregoing reasons this Court should deny Cotton's petition for an alternative writ of
5 mandate as well as deny his request for an expedited hearing and briefing schedule. The petition
6 should be transferred to Judge Wohlfeil to decide the most orderly process for deciding the disputes
7 between the parties arising under the Geraci Lawsuit and the Petition.

8 Should the court decide not to transfer this matter to Judge Wohlfeil, then the Court should not
9 rule on the petition on an ex parte basis. Rather, the court should set a reasonable schedule with a
10 hearing no earlier than February 2018.

11 Dated: October 27, 2017

FERRIS & BRITTON,
A Professional Corporation

13
14 By: 
15 Michael R. Weinstein
16 Scott H. Toothacre
Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

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Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

F I L E D
Clerk of the Superior Court

OCT 31 2017

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants.

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

**REAL PARTIES IN INTEREST LARRY
GERACI AND REBECCA BERRY
REQUEST FOR JUDICIAL NOTICE IN
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

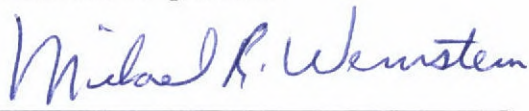
Petition Filed: October 6, 2017
Trial Date: None

1 Real Parties in Interest LARRY GERACI and REBECCA BERRY hereby request that the
2 court take judicial notice of the following matter under the provisions of Evidence Code sections 451
3 and/or 452:

- 4 1. Complaint filed March 21, 2017, in Larry Geraci v. Darryl Cotton, San Diego Superior
5 Court Case No. 37-2017-0010073-CU-BC-CTL
6

7
8 Dated: October 31, 2017

Respectfully submitted,
FERRIS & BRITTON
A Professional Corporation

9
10 By: 
11 Michael R. Weinstein
12 Scott H. Toothacre
13 Attorneys for Real Parties in Interest
14 LARRY GERACI and REBECCA BERRY
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17 Attorneys for Real Parties in Interest
18 LARRY GERACI and REBECCA BERRY

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28
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants.

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

Real Parties In Interest.

F I L E D

Clerk of the Superior Court

OCT 31 2017

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

Judge: Hon. Eddie Sturgeon

**REAL PARTIES IN INTEREST LARRY
GERACI AND REBECCA BERRY
NOTICE OF LODGMENT IN
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 Real Parties in Interest LARRY GERACI and REBECCA BERRY hereby lodge the following
2 documents as exhibits to this Notice of Lodgment ("NOL") in opposition to petitioner's ex parte
3 application for issuance of an alternative writ or for an order setting an expedited hearing date and
4 briefing schedule.

Ex. No.	Exhibit Description	Evidentiary Foundation
1.	Complaint filed March 21, 2017, in Larry Geraci v. Darryl Cotton, San Diego Superior Court Case No. 37-2017-0010073-CU-BC-CTL	Request for Judicial Notice, para. 1
2.	Written real estate purchase and sale agreement between Larry Geraci and Darryl Cotton dated November 2, 2016 (the "Nov 2nd Written Agreement")	Decl. of Larry Geraci, para. 5
3.	Ownership Disclosure Statement (Form DS-318) dated October 31, 2016	Decl. of Schweitzer, para. 5; Decl. of Geraci, para. 6
4.	Written real estate purchase and sale agreement between Richard Martin II and Darryl Cotton dated March 21, 2017, as amended (the "Martin Sale Agreement")	Decl. of Michael Weinstein, para. 8
5.	3/21/17 @ 8:54 a.m. e-mail from Firouzeh Tirandazi to Darryl Cotton	Decl. of Larry Geraci, para. 10
6.	3/21/17 @ 3:18 p.m. e-mail from Darryl Cotton to Larry Geraci	Decl. of Larry Geraci, para. 11
7.	3/21/17 @ 3:25 p.m. e-mail from Darryl Cotton to Firouzeh Tirandazi	Decl. of Larry Geraci, para. 12

8.	5/5/17 e-mail from Darryl Cotton to Firouzeh Tirandazi	Decl. of Michael Weinstein, para. 9
----	--	-------------------------------------

Dated: October 31, 2017

Respectfully submitted,
FERRIS & BRITTON
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Real Parties in Interest
LARRY GERACI and RECECCA BERRY

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Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants.

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

**REAL PARTIES IN INTEREST LARRY
GERACI AND REBECCA BERRY
NOTICE OF LODGMENT IN
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

FILED
Clerk of the Superior Court

OCT 31 2017

Real Parties in Interest LARRY GERACI and REBECCA BERRY hereby lodge the following documents as exhibits to this Notice of Lodgment ("NOL") in opposition to petitioner's ex parte application for issuance of an alternative writ or for an order setting an expedited hearing date and briefing schedule.

Ex. No.	Exhibit Description	Evidentiary Foundation
1.	Complaint filed March 21, 2017, in Larry Geraci v. Darryl Cotton, San Diego Superior Court Case No. 37-2017-0010073-CU-BC-CTL	Request for Judicial Notice, para. 1
2.	Written real estate purchase and sale agreement between Larry Geraci and Darryl Cotton dated November 2, 2016 (the "Nov 2nd Written Agreement")	Decl. of Larry Geraci, para. 5
3.	Ownership Disclosure Statement (Form DS-318) dated October 31, 2016	Decl. of Schweitzer, para. 5; Decl. of Geraci, para. 6
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5.	3/21/17 @ 8:54 a.m. e-mail from Firouzeh Tirandazi to Darryl Cotton	Decl. of Larry Geraci, para. 10
6.	3/21/17 @ 3:18 p.m. e-mail from Darryl Cotton to Larry Geraci	Decl. of Larry Geraci, para. 11
7.	3/21/17 @ 3:25 p.m. e-mail from Darryl Cotton to Firouzeh Tirandazi	Decl. of Larry Geraci, para. 12

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	8.	5/5/17 e-mail from Darryl Cotton to Firouzeh Tirandazi	Decl. of Michael Weinstein, para. 9
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Dated: October 31, 2017

Respectfully submitted,
FERRIS & BRITTON
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

EXHIBIT 1

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Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

PLAINTIFF'S COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;
3. SPECIFIC PERFORMANCE; and
4. DECLARATORY RELIEF.

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

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

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

14 GENERAL ALLEGATIONS

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

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

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
28 \$300,000.00 on the CUP process, ~~all in~~ reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

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

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

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

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

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**

23 **against Defendant COTTON and DOES 1-5)**

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

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

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

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

8 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

20 FOURTH CAUSE OF ACTION

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

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

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

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

6 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7 **On the First and Second Causes of Action:**

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

10 **On the Third Cause of Action:**

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

13 3. If specific performance cannot be granted, then damages in an amount in excess of
14 \$300,000.00 according to proof at trial.

15 **On the Fourth Cause of Action:**

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

19 **On all Causes of Action:**

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

25 6. For costs of suit incurred herein; and

26 ///

27 ///

28 ///

7. For such other and further relief as the Court may deem just and proper.

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein

Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI



EXHIBIT A

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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


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 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)



EXHIBIT 2

11/02/2016

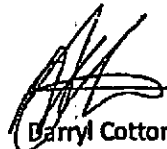
Agreement between Larry Geraci or assignee and Darryl Cotton:

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 Cerao
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)

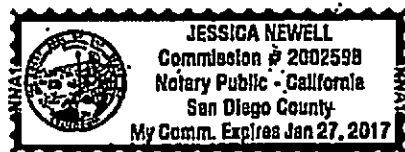


EXHIBIT 3



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment ☐ Other _____

Project Title

Federal Blvd. MMCC

Project No. For City Use Only

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:

Signature:

[Signature]

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:

Signature:

[Signature]

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

EXHIBIT 4



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 6176 Federal Blvd
San Diego (City), San Diego (County), California, 92114-1401 (Zip Code), Assessor's Parcel No. 243-020-03-0 (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 Representative of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PROS)

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), made payable 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)) 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):
© 2015 California Association of REALTORS, Inc.
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), or willing, 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 not 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 18, in writing, remove the loan contingency if 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.

4. 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).

5. ADDENDA AND ADVISORIES:

A. ADDENDA:

☒ Addendum # 1 (C.A.R. Form AD1A)
☐ Back Up Offer Addendum (C.A.R. Form BUD)
☐ County Confirmation Addendum (C.A.R. Form CCA)
☐ Spill, Well and Property Monument Addendum (C.A.R. Form SWPI)
☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Other

B. BUYER AND SELLER ADVISORIES:

☒ Buyer's Inspection Advisory (C.A.R. Form BI-A)
☐ Probate Advisory (C.A.R. Form PA)
☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBA)
☐ Trust Advisory (C.A.R. Form TA)
☐ REO Advisory (C.A.R. Form REO)
☐ Short Sale Information and Advisory (C.A.R. Form SSA)
☐ Other

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

7. ALLOCATION OF COSTS

- A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed, in writing, this paragraph only determines who is to pay for 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 hazards 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 bracing, 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)



CPA REVISED 12/15 (PAGE 2 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 2 OF 11)

Prepared with reference to 2009/11 "C.A.R. Form CPA" and 2009/11 "C.A.R. Form CPA"

11/15/15

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 retrofit 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 conducting a 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 offers 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, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached door coverage, television antennas, satellite dishes, air conditioners/coolers, pool/spa equipment, garage door openers/remote controls, mailboxes, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems, etc.
- (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(1), 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-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase replacement thereof, and insurance proceeds.
- (7) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 18A, 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 (a) 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 internal and external 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 on the date of Close Of Escrow, (ii) ☐ no later than _____ calendar days After Close Of Escrow, or (iii) ☐ at _____ AM 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 01, 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' contract and will not disavow the assignability of any warranties.

Buyer's Initials (x) JA () _____
CPA REVISED 12/15 (PAGE 3 OF 11)

Seller's Initials (x) _____ () _____

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 3 OF 11)

Prepared and approved by the C.A.R. 1977 Commercial Real Estate Contract, with amendments.

1/15/16 Edition



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

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 internet and internet-connected devices included in the purchase price, and garage door openers. 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 disclosure 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 lawsuits, investigations, inquiries, actions, 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 conspiracy.
- C. **WITHHOLDING TAXES:** Within the time specified in paragraph 18A, to avoid required withholding Seller shall Deliver to Buyer to 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.phhisa.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 shall, 3 (or) Days After Acceptance to request from the OA (C.A.R. Form PDA): (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 for regular and special meetings; and (v) the names and contact information of all OAs governing the Property collectively, "CI Disclosures". Seller shall transmit 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 (Y)

CPA REVISED 12/15 (PAGE 4 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 4 OF 11)

Produced with approval by all agents 10/10/10 from the East Coast Multiple Listing Service



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

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 sanctioned in paragraph 16, receive the 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 in Buyer's 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 right 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 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 (ii) subject to Buyer's investigation rights, (iii) the Property, including but not landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance and (iii) all other and personal property not included in the sale shall be removed by Close Of Escrow.
- A. Seller shall, within the time specified in paragraph 15A, 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 15B, based upon information disclosed 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 provided in this paragraph and paragraph 15B. Within the time specified in paragraph 15B(i), 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 completed 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 pans consent; shall NOT include water coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall not only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for insect infestation or infestations (Section 1) and for conditions likely to lead to infestation or infestation (Section 2); (iii) review the registered and other water test results; (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 estimator 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 15B complete Buyer investigations and either remove the 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 past 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 all resulting liability, claims, damages, costs and expenses. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers compensation and other applicable insurance, defending and protecting Seller from liability for any claims 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-Responsible Party" (C.A.R. Form 51B) for Buyer investigations and work done on the Property in Buyer's direction. Buyer's obligation under this paragraph shall survive the termination of this Agreement.
17. TITLE AND VESTING:
- A. Within the time specified in paragraph 15 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 15B. 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 (FIDCO), 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 for: (i) monetary liens of record which Seller is obligated to pay; and (ii) 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 15A Seller has a duty to disclose to Buyer all matters known to Seller affecting the condition of record or otherwise.

Buyer's Initials (X) _____ ()
CPA REVISED 12/15/16 PAGE 5 OF 11

Seller's Initials (X) _____ ()

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 5 OF 11)

Prepared and published by: 2017-03-21 11:00 AM



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

Date March 21, 2017

- D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's household interest) including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- E. Buyer shall receive a standard coverage owners CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.
18. TIME PERIODS; REMOVAL OF CONTINGENCIES, CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. SELLER HAS: 7 (or) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5A, 6, 7, 6B(7), 11A, B, C, D and E, 12, 15A and 17A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.
- B. (1) BUYER HAS: 17 (or) Days After Acceptance, unless otherwise agreed in writing, to
- (i) complete all Buyer Investigations; review all disclosures; report; issue documents to be assumed by Buyer pursuant to paragraph 6B(7) and other applicable information, which Buyer receives from Seller, and approve all matters affecting the Property;
- (2) Within the time specified in paragraph 18B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR; Buyer's request.
- (3) By the end of the time specified in paragraph 18B(1) (or as otherwise specified in this Agreement) Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 18A, then Buyer has 5 (or) Days After Delivery of any such items, or the time specified in paragraph 18B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
- (4) Continuation of Contingency: Even after the end of the time specified in paragraph 18B(1) and before Seller cancels (i) all, pursuant to paragraph 18C, Buyer retains the right, in writing, to either (i) remove remaining contingencies or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 18C(1).
- C. SELLER RIGHT TO CANCEL:
- (1) Seller right to Cancel: Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) Seller right to Cancel: Buyer Contract Obligations: Seller, after first Delivering to Buyer a NSP, may cancel this Agreement (i) by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited, (ii) Deliver a letter as required by paragraph 3J(1), (iii) Deliver verification as required by paragraph 3C or 3H or if Seller cannot verify improvements (i) the verification provided by paragraph 3C or 3H; or (iv) in writing assume or accept costs or liens specified in 6B(7), (v) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 26d, or (vi) Provide evidence of authority to sign in a representative capacity as specified in paragraph 23. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- D. NOTICE TO BUYER OR SELLER TO PERFORM: The NSP or NSP shall (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or) Days After Delivery for until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NSP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remedy a contingency or cancel this Agreement or meet an obligation specified in paragraph 18.
- E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights unless otherwise specified in writing, Buyer shall conclusively be deemed to have (i) completed all Buyer Investigations and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Reports or disclosures pertaining to that contingency or cancellation right or for the inability to obtain financing.
- F. CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall (i) be signed by the applicable Buyer or Seller, and (ii) give the other Party at least 3 (or) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.
- G. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights only retained under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award, if either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form SDRD or SIFD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

Buyer's Initials:
CPA REVISED 12/15 (PAGE 6 OF 11)

Seller's Initials:



COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 6 OF 11)

Prepared with REFERENCE by REALTOR® (MDS) Form 921 (2006) Member 40750, mds@realtor.com

1/14/17

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, skillful 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 16; (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, HOA 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. 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 price 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 as a representative capacity and not for themselves 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 Acknowledgment, 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 18130.5), 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, 39, 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 examine such provisions within the time specified in paragraph 7C, 14C. 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/HOA management company or others any fee required by paragraphs 7, 17 or elsewhere in this Agreement.

Buyer's Initials (X) _____
CPA REVISED 12/15/16 (PAGE 7 OF 11)

Seller's Initials (X) _____

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 7 OF 11)

Produced and distributed by California REALTORS® Association, 1401 F Street, Suite 1000, San Francisco, CA 94104

with addendum



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

Date: March 21, 2017

- B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____) Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.
- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 22A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 22A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- D. Upon receipt Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.
- 25. REMEDIES FOR BUYER'S BREACH OF CONTRACT:**
- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).

Buyer's Initials

Seller's Initials

26. DISPUTE RESOLUTION:

- A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.** Exclusions from this mediation agreement are specified in paragraph 26C.
- B. **ARBITRATION OF DISPUTES:** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials

Seller's Initials

Buyer's Initials (X) _____
CPA REVISED 12/15 (PAGE 8 OF 11)

Seller's Initials (X) _____

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 8 OF 11)

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

Date March 21, 2017

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2935; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so 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 25A.
- 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 AOA).
- 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 requires 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 in 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 to be provided 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 initiate 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 Broker's 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 the 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)
CPA REVISED 12/15/PAGE 9 OF 11

Seller's Initials (X)

Property Address: 5175 Federal Blvd, San Diego, CA 92114-1401

Date March 21, 2017

- C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
- D. "Close Of Escrow" or "COE" means the date the grant deed, or other evidence of transfer of title, is recorded.
- E. "Copy" means copy by any means including photocopy, NCR, 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.
- G. "Days After" means the specified number of calendar days after 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 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.
- L. "Repairs" means any repairs (including post closing), alterations, replacements, modifications or rectifying of the Property provided for under this Agreement.
- M. "Signed" means either a handwritten or electronic signature on an original document. Copy or any counterpart.
40. **AUTHORITY:** Any person or persons signing this Agreement represent(s) that such person has full power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to enter 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 ALL 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

Date _____ 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 (C.A.R. Form RCSD-S) for additional terms.

Date 3-21-17 SELLER [Signature]
(Print name) Darryl Cotton

Date _____ SELLER _____
(Print name) _____

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

(_____) (Do not initial if making a counter offer.) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) at 5:00 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 CBO). 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. # _____ Date _____
 By _____ CalBRE Lic. # _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____
 Real Estate Broker (Listing Firm) N/A
 By _____ CalBRE Lic. # _____ Date _____
 By _____ CalBRE Lic. # _____ 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 agrees to act as Escrow Holder subject to paragraph 24 of this Agreement and supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of this Agreement is between Buyer and Seller is _____.

Escrow Holder _____ Escrow # _____
 By _____ Date _____
 Address _____
 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 Initials _____

Buyer's Initials: MM (_____) Seller's Initials: MM (_____)
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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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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), ☐ Offer

dated March 21, 2017 on property known as San Diego, CA 92114-1401 6178 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

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, 30% 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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Revised by _____ Date _____





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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)



CALIFORNIA
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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 6176 Federal Blvd

San Diego, CA 92114-1401

in which Richard John Martin II is referred to as "Buyer/Tenant",
and 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 Geraci'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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Revised by Date



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)

EXHIBIT 5

To: d cotton@fleetsystems.net[d cotton@fleetsystems.net]
Cc: Becky Berry[Becky@tfc sd.net]; brianna@bhpsonline.com[brianna@bhpsonline.com]
From: Tirandazi, Firouzeh
Sent: Tue 3/21/2017 8:54:01 AM
Importance: Normal
Subject: Federal Boulevard MMCC
Received: Tue 3/21/2017 8:54:07 AM

Good Morning Mr. Cotton,

As a follow-up to our conversation this morning regarding your potential interest as property owner in withdrawing the above referenced CUP application, I just noticed that you are not the financial responsible party for the subject application. As such, I will also need written acknowledgement from Ms. Rebecca Berry, the applicant, who is the financial responsible party, to withdraw the subject CUP application.

As requested, here is a link to the 2/14 Council docket and supporting material - Item No. 51:

<http://dockets.sandiego.gov/sirepub/pubmtgframe.aspx?meetid=3410&doctype=Agenda>

Regards,

Firouzeh Tirandazi
Development Project Manager
City of San Diego
Development Services Department

(619)446-5325
sandiego.gov

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EXHIBIT 6



Darryl Cotton <indagrodarryl@gmail.com>

Contract Review

Darryl Cotton <indagrodarryl@gmail.com>

Tue, Mar 21, 2017 at 3:18 PM

To: Larry Geraci <Larry@tfcisd.net>

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

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

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

Darryl Cotton

[Quoted text hidden]

EXHIBIT 7

To: Tirandazi, Firouzeh[FTirandazi@sandiego.gov]
Cc: Becky Berry[Becky@tfcscd.net]; brianna@bhpsonline.com[brianna@bhpsonline.com]; Larry Geraci[Larry@tfcscd.net]
From: Darryl Cotton
Sent: Tue 3/21/2017 3:25:24 PM
Importance: Normal
Subject: Re: PTS 520606 - Federal Blvd MMCC
Received: Tue 3/21/2017 3:25:29 PM

Hello Firouzeh,

As a follow-up to our recent conversations, the potential buyer, Larry Geraci (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property.

Thank you again for your help.

Best,

Darryl Cotton

On Thu, Mar 16, 2017 at 4:55 PM, Tirandazi, Firouzeh <FTirandazi@sandiego.gov> wrote:

Hello Mr. Cotton,

As requested, please find attached the Ownership Disclosure Statement signed by you (property owner), and Rebecca Berry (tenant/lessee) on October 31, 2016, submitted with the above referenced project application. I have copied Ms. Berry and the project Point of Contact (Bree Harris) on this email as well.

The project was deemed complete March 13, 2017 and is currently in the first review cycle. As property owner, if you wish to withdraw this application, please notify me in writing.

Regards,

Firouzeh Tirandazi


Development Project Manager

City of San Diego

Development Services Department

(619)446-5325

sandiego.gov

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EXHIBIT 8

7/29/2017

Gmail - Federal Blvd. Application



Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd. Application

2 messages

Darryl Cotton <indagrodarryl@gmail.com>
To: "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>

Mon, May 15, 2017 at 3:12 PM

Hello Firouzeh,

Following-up on our conversation on Friday, I appreciate that you procedurally cannot accept the updated Ownership Disclosure Statement, reflecting Richard Martin, for the CUP application on the property.

I came across a similar case to my own, Engerbreitsen v. City of San Diego (CUP Project # 370687), which I am assuming you are familiar with. Similar to him, I will be filing a request with the Court to ask the City to revise the application to reflect the true owner of the property and the CUP application.

Reviewing the requirements, it seems that I need to provide evidence that I attempted to have the CUP application revised with the true owner and notice of my intent to ask the Court for help with the CUP application.

Please consider this the record of our conversation on Friday of my attempt to have the Ownership Disclosure Statement updated and my notice of my intent to seek the Court's help.

Thank you for your help.

Sincerely,

Darryl Cotton

 Virus-free, www.avast.com

Tirandazi, Firouzeh <FTirandazi@sandiego.gov>
To: Darryl Cotton <indagrodarryl@gmail.com>
Cc: "abhay@techne-us.com" <abhay@techne-us.com>

Mon, May 15, 2017 at 3:51 PM

You may have misunderstood me. If the property has changed ownership, feel free to provide an updated general application, ownership disclosure statement, and the new Grant Deed so that we may have the most updated information for the project file.

If as a result of this there is a new financial responsible party, please provide a change of responsible party form.

Thank you.

From: Darryl Cotton <indagrodarryl@gmail.com>
Sent: Monday, May 15, 2017 3:12:15 PM
To: Tirandazi, Firouzeh
Subject: Federal Blvd. Application

[Quoted text hidden]

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 Petitioner/Plaintiff,

23 v.

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

26 Respondents/Defendants.

27 REBECCA BERRY, an individual; LARRY
28 GERACE, an individual, and ROES 1 through
29 25,

30 Real Parties In Interest.

FILED
Clerk of the Superior Court
OCT 31 2017

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

Judge: Hon. Eddie Sturgeon

**DECLARATION OF MICHAEL R.
WEINSTEIN 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
2 I, Michael R. Weinstein, declare:

3 1. I am an attorney with Ferris & Britton, APC, the attorneys for Real Parties in Interest
4 Larry Geraci and Rebecca Berry. I have personal knowledge of the facts stated in this declaration. If
5 called as a witness, I would testify competently thereto. I provide this declaration in support of Real
6 Parties In Interest Rebecca Berry and Larry Geraci's ("Real-Parties") opposition to
7 Petitioner/Plaintiff's request for the ex parte issuance of an alternative writ of mandate or,
8 alternatively, an order setting an expedited hearing of the Petition.

9 2. I also represent Larry Geraci (as Plaintiff and Cross-Defendant) and Rebecca Berry (as
10 Cross-Defendant) in a pending lawsuit I filed on behalf of Larry Geraci on March 21, 2017, captioned
11 Larry Geraci v. Darryl Cotton, Case No. 37-2017-0010073-CU-BC-CTL, and which is assigned to
12 Judge Wohlfeil (hereafter the "Geraci Lawsuit"). A copy of the Complaint filed in the pending Geraci
13 Lawsuit is attached as Exhibit 1 to the Real Parties in Interest's Notice of Lodgment in Opposition to
14 the Ex Parte Application for Issuance of an Alternative Writ of Mandate or for an Order Setting an
15 Expedited Hearing Date and Briefing Schedule (hereafter "RPI NOL"). **The Geraci Lawsuit is set**
16 **for Trial on May 11, 2018.**

17 3. When filing his instant Petition for Writ of Mandate, Petitioner Cotton did not file the
18 required Notice of Related Action advising the court of the pending Geraci Lawsuit. The Geraci
19 Lawsuit arises out of the same facts and circumstances that underlie this Petition. In the Geraci
20 Lawsuit, Geraci has asserted claims against Cotton for, among other things, breach of contract and
21 specific performance of a November 2, 2016, signed written agreement for the purchase and sale of the
22 property which is the subject of the CUP Application from Cotton to Geraci. A copy of that
23 November 2, 2016, signed written agreement is attached as Exhibit A to the Complaint in the Geraci
24 Lawsuit. (See Complaint and Exh. A thereto, Exhibit 1 to RPI NOL.)

25 4. The November 2, 2016, signed written agreement is central to the Geraci Lawsuit. It is
26 also central to the issues to be decided in connection with the instant Petition for Writ of Mandate in
27 that under the written agreement Geraci, acting through his agent Rebecca Berry, is a "person who
28

1 can demonstrate a legal right, interest, or entitlement to the use of the real property subject to
2 the application.” (SDMC, §§ 112.0102, subd. (a), 113.0103 [defining applicant].) In his Petition,
3 Cotton is attempting to hijack for himself the CUP Application validly and properly submitted by
4 Berry, on behalf of Geraci, which has been in process for twelve months already and for which Geraci
5 has expended over \$150,000 to date.

6 5. Based on the earlier filed related action—the Geraci Lawsuit—the Petition should be
7 denied without prejudice and transferred to Judge Wohlfeil.

8 6. If the court does not transfer this matter to Judge Wohlfeil, then the Court should deny
9 any ex parte attempt to obtain the issuance of a writ of mandate. The matter needs to be fully heard
10 and Real Parties in Interest should be given adequate time to prepare for the hearing or trial. To do
11 otherwise would be a denial of due process and fundamental fairness to Real Parties in Interest.

12 7. Petitioner has requested an order setting an expedited hearing on the Petition for
13 November 14, 2017, with Real Parties in Interest’s opposition papers to be filed on November 7, 2017,
14 only seven (7) calendar days after the ex parte hearing. As discussed below, Petitioner indicated to the
15 City as far back as May 15, 2017, that he intended to seek this relief. **And then he waited five (5)**
16 **months to do so!** Now he is asking that Real Parties in Interest have only one (1) week to put together
17 its opposition. That is totally inadequate and fundamentally unfair.

18 8. In the Geraci Lawsuit, Cotton has also produced documents which reveal that Cotton,
19 as early as February 2017, and in breach of his written agreement with Geraci, was negotiating
20 possible purchases with other potential buyers of the Property. In particular, Cotton has produced
21 documents regarding an agreement he entered into on March 21, 2017, to sell the Property to another
22 person, Richard John Martin II. That real estate purchase and sale agreement was amended on April
23 15, 2017, and again on May 12, 2017. A copy of the signed written documents comprising the
24 agreement for the sale and purchase of the property from Cotton to Richard John Martin II is attached
25 as Exhibit 4 to the RPI NOL (the “Martin Sale Agreement”). The key terms of the agreement include:
26 a) Martin will pay Cotton a purchase price of \$2,000,000 for the Property; b) Martin has paid non-
27 refundable deposits of \$150,000 to Cotton to be applied to the purchase price; and c) the closing of the

1 sale and payment of the balance of the purchase price to Cotton is conditioned upon a favorable
2 outcome in the Geraci Lawsuit.

3 9. In the Geraci Lawsuit, Cotton has also produced a May 15, 2017, email from Mr.
4 Cotton to Ms. Tirandazi at the City stating, "I will be filing a request with the Court to ask the City to
5 revise the application to reflect the true [] owner of the property and the CUP application.... Please
6 consider this the record of our conversation on Friday of my attempt to have the Ownership Disclosure
7 Statement updated and my notice of intent to seek the Court's help." A copy of this May 15, 2017,
8 email is attached as Exhibit 8 to the RPI NOL.

9 10. Despite being fully aware of Berry's CUP Application from the outset and even after
10 putting the City on notice on May 15, 2017, that it would seek the Court's intervention to substitute
11 him in place of Berry as the Applicant on the CUP Application, **Cotton has waited another nearly**
12 **five (5) months before his October 6, 2017, filing of his Petition for Writ of Mandate seeking that**
13 **very court intervention he had advised the City was coming.** During that time Geraci/Berry have
14 continued to process the CUP Application at great effort and expense.

15 11. And although Cotton entered into the Martin Sale Agreement on March 21, 2017, it
16 does not appear that in the seven (7) months since then that either Mr. Cotton or Mr. Martin has
17 submitted his own separate CUP Application for the Property for processing by the City. Rather,
18 Cotton waited six months until, on September 22, 2017, his lawyer sent a letter to the City of San
19 Diego demanding that the City either: (1) remove Ms. Berry from the CUP Application and process
20 the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application
21 for a CUP on the Property in his capacity as record owner. (See Cotton Petition for Writ of Mandate,
22 Exhibit 4.) By email dated September 29, 2017, the City responded to this demand. The City stated
23 that it would process parallel applications but further advised Cotton's counsel that "the City is only
24 able to make a decision on one of these applications; the first project deemed ready for a decision by a
25 Hearing Officer will be scheduled for a public hearing. Following any final decision on one of the
26 CUP applications submitted for the above referenced address, the CUP application still in process
27 would be obsolete and need to be withdrawn." (See Cotton Petition for Writ of Mandate, Exhibit 5.)
28

1 12. I am informed and believe that as of October 28, 2017, there has been no other CUP
2 Application submitted regarding the Property. Thus, after waiting at least six months to inquire about
3 pursuing his own application and after receiving the City's response on September 29, 2017, Cotton
4 has still failed to submit his own separate, parallel application. Instead, on October 6, 2017, he filed
5 the instant Petition for Writ of Mandate to hijack the CUP Application filed by Berry on behalf of
6 Geraci.

7 13. Based on the foregoing and the concurrently filed declaration of Abhay Schweitzer
8 regarding the current status of the CUP Application, which has not even been for public hearing let
9 alone approved, the hearing on the instant Petition should not be set earlier than February 2018.

10
11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed this 31st day of October, 2017.

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15 MICHAEL R. WEINSTEIN
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10 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY
11

12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

14 DARRYL COTTON, an individual,
15 Petitioner/Plaintiff,

16 v.

17 CITY OF SAN DIEGO, a public entity; and
18 DOES 1 through 25,
19 Respondents/Defendants.

20 REBECCA BERRY, an individual; LARRY
GERACE, an individual, and ROES 1 through
21 25,

22 Real Parties In Interest.
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26
27
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F I L E D
Clerk of the Superior Court

OCT 31 2017

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

Judge: Hon. Eddie Sturgeon

**DECLARATION OF LARRY GERACI IN
SUPPORT OF OPPOSITION TO EX
PARTE APPLICATION FOR ISSUANCE
OF AN ALTERNATIVE WRIT OF
MANDATE OR FOR AN ORDER
SETTING EXPEDITED HEARING DATE
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, Larry Geraci, declare:

2 1. I am an adult individual residing in the County of San Diego, State of California, and I
3 am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts
4 and if called as a witness could and would so testify.

5 2. In approximately September of 2015, I began lining up a team to assist in my efforts to
6 develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical
7 marijuana dispensary) in San Diego County. At the time I had not yet identified a property for the
8 MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify
9 potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE.
10 I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of
11 Bartell & Associates. And I hired a land use attorney, Gina Austin of Austin Legal Group.

12 3. The search to identify potential locations for the business took some time as there are a
13 number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a
14 City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child
15 care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities,
16 or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be
17 proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta
18 identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San
19 Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a
20 potential site for acquisition and development for use and operation as a MMCC. And in
21 approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest
22 to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might
23 meet the requirements for an MMCC site.

24 4. For several months after the initial contact, my consultant, Jim Bartell, investigated
25 issues related to whether the location might meet the requirements for an MMCC site, including zoning
26 issues and issues related to meeting the required distances from certain types of facilities and residential
27 areas. For example, the City had plans for street widening in the area that potentially impacted the

1 ability of the Property to meet the required distances. Although none of these issues were resolved to a
2 certainty, I determined that I was still interested in acquiring the Property.

3 5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the
4 Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon
5 my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I
6 was willing to bear the substantial expense of applying for and obtaining CUP approval and understood
7 that if CUP approval was not obtained the purchase would not be consummated and I would lose my
8 investment. And I was willing to pay a price for the Property based on what I anticipated it might be
9 worth if such approval was obtained. Mr. Cotton told me that he was willing to make the purchase and
10 sale conditional upon CUP approval because if the condition was satisfied he would be receiving a
11 much higher price than the Property would be worth in the absence of its approval for use as a medical
12 marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of
13 \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement
14 for my purchase of the Property from him on the terms and conditions stated in the agreement
15 (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written
16 Agreement, which was executed before a notary, is attached as Exhibit 2 to Real Parties in Interest
17 Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of an Alternative
18 Writ of Mandate or for an Order Setting an Expedited Hearing Date and Briefing Schedule (hereafter
19 the "RPI NOL"). I tendered the \$10,000 deposit to Mr. Cotton the receipt of which he acknowledged
20 in the Nov 2nd Written Agreement.

21 6. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the
22 CUP application and approval process and that his consent as property owner would be needed to
23 submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as
24 my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as the
25 Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or
26 marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton
27 signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he
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1 acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the
2 subject Property with the intent to record an encumbrance against the property. The Ownership
3 Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was
4 serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure
5 Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 3 to
6 the RPI NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of
7 a CUP would be a condition of the purchase and sale of the Property.

8 7. As noted above, I had already put together my team for the MMCC project. My design
9 professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of
10 the Project and the CUP application and approval process. Mr. Schweitzer was responsible for
11 coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property
12 and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San
13 Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration
14 (Declaration of Abhay Schweitzer in Support of Opposition to Ex Parte Application for Issuance of
15 Alternative Writ of Mandate, Etc.) has been submitted concurrently herewith and describes in greater
16 detail the CUP Application submitted to the City of San Diego, which submission included the
17 Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

18 8. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr.
19 Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. To be
20 clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in
21 different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a
22 hydroponic grower and purported to have useful experience he could provide regarding the operation of
23 such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary discussions
24 related to his desire to be involved in the *operation* of the business (not related to the purchase of the
25 Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits)
26 in exchange for his providing various services to the business—but we never reached an
27 agreement as to those matters related to the operation of my future MMCC business. Those discussions
28

1 were not related to the purchase and sale of the Property, which we never agreed to amend or modify.
2 After the November 2nd Written Agreement was signed, we had further discussions about this but
3 those discussions broke down because Mr. Cotton made what I believe were demands for excessive
4 compensation and even ownership of the business. I did not want to pay what he demanded for the
5 services he might offer. He kept demanding more and more and I decided that I did not want him to
6 have any involvement in the future business to be operated at the Property, let alone as a partner or
7 owner. I told him I did not want him as a partner in my business and we never reached any agreement
8 on his involvement in the marijuana dispensary business to be operated at the Property.

9 9. Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the
10 failure to reach agreement regarding his possible involvement with the operation of the business to be
11 operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in
12 the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made
13 clear that he had no intention of living up to and performing his obligations under the Agreement and
14 affirmatively threatened to take action to halt the CUP application process.

15 10. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
16 Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
17 processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application.
18 That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to
19 Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as
20 Exhibit 5 to the RPI NOL.

21 11. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he
22 would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his
23 property and that "I will be entering into an agreement with a third party to sell my property and they
24 will be taking on the potential costs associated with any litigation arising from this failed agreement
25 with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 6
26 to the RPI NOL.

27 12. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the
28

1 City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "... the potential buyer,
2 Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today,
3 there are no third-parties that have any direct, indirect or contingent interests in my property. The
4 application currently pending on my property should be denied because the applicants have no legal
5 access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached
6 as Exhibit 7 to the RPI NOL. Mr. Cotton's email was false as we had a signed agreement for the
7 purchase and sale of the Property – the Nov 2nd Written Agreement.

8 13. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the
9 CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

10 14. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the
11 written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP
12 application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to
13 enforce the Nov 2nd Written Agreement. A true and correct copy of that Complaint, filed March 21,
14 2017, is attached as Exhibit 1 to the RPI NOL.

15 15. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue
16 our CUP Application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP
17 application, we have completed the initial phase of the CUP process whereby the City deemed the CUP
18 application complete (although not yet approved) and determined it was located in an area with proper
19 zoning. We have not yet reached the stage of a formal City hearing and there has been no final
20 determination to approve the CUP. The current status of the CUP Application is set forth in the
21 Declaration of Abhay Schweitzer.

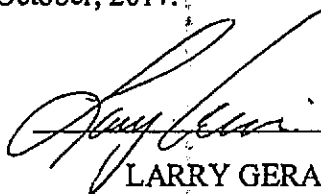
22 16. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m.
23 email (referenced in paragraph 10 above - see Exhibit 6 to RPI NOL) stating that he would be
24 "entering into an agreement with a third party to sell my property and they will be taking on the
25 potential costs associated with any litigation arising from this failed agreement with you. We have
26 learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had
27 been negotiating with other potential buyers of the Property to see if he could get a better deal than he
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1 had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase
2 and sale agreement to sell the Property to another person, Richard John Martin II.

3 17. Although he entered into this alternate purchase agreement with Mr. Martin as early as
4 March 21, 2017, to our knowledge in the seven (7) months since neither Mr. Cotton nor Mr. Martin or
5 other agent has submitted a separate CUP Application to the City for processing. During that time, we
6 continued to process our CUP Application at great effort and expense.

7 18. In the last 15 months or so I have incurred substantial expenses to date in excess of
8 \$150,000 in pursuing the MMCC project and the related CUP application.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct. Executed this 30 day of October, 2017.

12
13  10-30-17.
14 LARRY GERACI

F I L E D

Clerk of the Superior Court

OCT 31 2017

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Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants.

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 30th 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

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 "RPI NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

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

11 7. The CUP application process generally involves several rounds of comments from the
12 City in which the applicant is required to respond in order to "clear" the comment. This processing
13 involved substantial communication back and forth with the City, with the City asking for additional
14 information, or asking for changes, and our responding to those requests for additional information and
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

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
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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 ABHAY SCHWEITZER