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9 Attorneys for Receiver
THOMAS C. HEBRANK

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13
14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

17 LOUIS V. SCHOOLER and FIRST
18 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
19 FINANCIAL PLANNING
CORPORATION,

20 Defendants.
21

Case No. 3:12-cv-02164-GPC-JMA

**RECEIVER'S NOTICE OF
MOTION AND MOTION FOR
APPROVAL OF FREETRADE/
SUNTEC/VIA 188 PROPERTY AND
AUTHORITY TO PAY BROKER'S
COMMISSION**

Date: April 14, 2017
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on April 14, 2017, at 1:30 p.m. in
 3 Courtroom 2D of the United States District Court, Southern District of California,
 4 located at 221 West Broadway, San Diego, California 92101, Thomas C. Hebrank
 5 ("Receiver"), the Court-appointed receiver for First Financial Planning Corporation
 6 d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the
 7 General Partnerships listed in Schedule 1 to the Preliminary Injunction Order
 8 entered on March 13, 2013 (collectively, "Receivership Entities"), will, and hereby
 9 does, move this Court for an order approving the sale of the Freetrade/Suntec/
 10 Via 188 property and authority to pay the real estate broker's commission
 11 ("Motion").

12 This Motion is based upon this notice, the accompanying Memorandum of
 13 Points and Authorities and Declaration of Thomas C. Hebrank, all pleadings and
 14 papers on file in this action, and upon such other matters as may be presented to the
 15 Court at the time of hearing.

16 **Procedural Requirements:** If you oppose the Motion, you are required to
 17 file your written opposition with the Office of the Clerk, United States District
 18 Court, Southern District of California, 333 West Broadway, Suite 420, San Diego,
 19 California 92101, and serve the same on the undersigned no later than 14 calendar
 20 days prior to the hearing date. An opposing party's failure to file an opposition to
 21 any motion may be construed as consent to the granting of the motion pursuant to
 22 Civil Local Rule 7.1(f)(3)(c).

23
 24 Dated: March 10, 2017

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

25
 26 By: /s/ Edward Fates

EDWARD G. FATES
 Attorneys for Receiver
 THOMAS C. HEBRANK

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9 Attorneys for Receiver
THOMAS C. HEBRANK

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

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14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

17 LOUIS V. SCHOOLER and FIRST
18 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
19 FINANCIAL PLANNING
CORPORATION,

20 Defendants.
21

Case No. 3:12-cv-02164-GPC-JMA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SALE OF
FREETRADE/SUNTEC/VIA 188
PROPERTY AND AUTHORITY TO
PAY BROKER'S COMMISSION**

Date: April 14, 2017
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its
3 subsidiaries and the General Partnerships listed in Schedule 1 to the Preliminary
4 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"),
5 submits this Memorandum of Points and Authorities in Support of his concurrently-
6 filed Motion for Approval of Sale of Freetrade/Suntec/Via 188 Property and
7 Authority to Pay Broker's Commission ("Motion").

8 I. BACKGROUND FACTS

9 The properties in the receivership include certain parcels of undeveloped land
10 located in the Tecate area of San Diego County and known as the Tecate properties.
11 The Tecate properties consist of seven separate properties, three of which are owned
12 by multiple GPs as co-tenants and four of which are owned outright by one GP.
13 One of the properties is owned by Freetrade Partners, Suntec Partners, and Via 188
14 Partners (collectively, "Freetrade"), each of which own an undivided 33.33%
15 interest in the property ("Freetrade Property"). Declaration of Thomas Hebrank
16 filed herewith ("Hebrank Decl."), ¶ 2.

17 On March 7, 2016, the Receiver recommended that six¹ Tecate properties be
18 listed for sale with Real Blue Properties, a licensed broker located in Carlsbad,
19 California ("Broker"). Dkt. No. 1203. The proposed list price for the Freetrade
20 Property was \$260,000. *Id.* On May 25, 2016, the Court approved the Receiver's
21 recommendation. Dkt. No. 1305. Broker promptly listed and advertised the
22 Freetrade Property for sale and marketed it to interested parties. Hebrank Decl., ¶ 3.

23 In January 2017, the Receiver received an all cash offer to purchase the
24 Freetrade Property for \$250,000 from Gerardo Aceves ("Buyer"). The offer was
25

26 ¹ The seventh Tecate property, which is owned by ABL Partners and Mex-Tec
27 Partners in co-tenancy, was not included in the original recommendation as those
28 GPs had sufficient cash to cover their 2016 Expenses. Once the Receiver's
orderly sale/distribution plan motion was approved, the Receiver proposed that
the ABL/Mex-Tec property be listed with the same broker as the other six Tecate
properties and that recommendation was approved by the Court.

1 reasonable in relation to the 2015 broker opinion of values ("BOVs") of the
2 Freetrade Property.² Accordingly, pursuant to the Court-approved Modified Orderly
3 Sale Procedures, the Receiver sent notice of the offer to investors,³ consulted with
4 Broker, and made a counter-offer to Buyer in the amount of \$260,000 (the Court-
5 approved list price). Buyer countered back, stating that \$250,000 was his best and
6 final offer, which the Receiver accepted, subject to overbid and Court approval. The
7 Receiver and Buyer executed a Vacant Land Purchase Agreement and Joint Escrow
8 Instructions and an Addendum to Land Purchase Agreement ("Agreement"). Buyer
9 conducted his due diligence and removed all contingencies (other than Court
10 approval) on March 3, 2017. Hebrank Decl., ¶ 4.

11 Therefore, in accordance with the Court-approved Modified Orderly Sale
12 Procedures, the Receiver hereby requests approval of the sale to Buyer, pursuant to
13 the Agreement, which is attached to the Hebrank Declaration as Exhibit A. The
14 Receiver will follow the publication of notice, qualification of bidders, and public
15 auction steps outlined below. In the event one or more prospective purchasers
16 qualify themselves to bid, the auction will be conducted by the Receiver and he will
17 then file a notice advising the Court of the result of the auction (*i.e.*, the highest bid)
18 and seek entry of an order confirming the sale. In the event no prospective
19 purchasers qualify themselves to bid, the Receiver will notify the Court and seek
20 entry of an order approving the sale to Buyer. Hebrank Decl., ¶ 5.

21

22

23

24 ² The Xpera Group valuation range (\$346,084-\$519,126), which was not provided
25 until after the Freetrade Property had been listed for sale, assumed the Tecate
26 properties would be held for an undetermined amount of time until San Diego
27 County finalized its General Plan for the area, which could take many years. The
Court rejected the plan to hold the Tecate properties indefinitely while waiting
for a General Plan to be finalized. Dkt. No. 1304, p. 18. Accordingly, the Xpera
Group valuation range has no bearing on the value of the Freetrade Property in
today's market.

28 ³ There were no responses from investors that addressed the substance of the offer
from Buyer or the Receiver's proposed response to the offer.

II. PROPOSED SALE

The key terms of the proposed purchase and sale agreement ("Agreement") are summarized as follows:

Purchase Price. The purchase price is \$250,000, which is to be paid in all cash.

Deposit. Buyer has deposited \$5,000 into escrow.

Closing Date. Closing shall occur within 21 days of Court approval.

As Is. The sale is on an "as is, where is" basis with no representations or warranties made by the Receiver.

Broker's Commission. Pursuant to the Court-approved listing agreement, Broker is to be paid a commission of 9% of the purchase price. If the sale to Buyer is approved, the commission owed will be \$22,500. If an overbid is received and an auction takes place, the commission would be adjusted to 9% of the final purchase price.

III. INVESTOR FEEDBACK

As noted above, pursuant to the Modified Orderly Sale Procedures (Dkt. No. 1309), the Receiver provided notice of the offer from Buyer to investors via email shortly after it was received. There were four responses total from investors, none of which addressed the substance of the offer or the Receiver's proposed response to the offer. Hebrank Decl., ¶ 6.

IV. LEGAL STANDARD

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment

1 of a receiver is authorized by the broad equitable powers of the court, any
2 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
3 953 F.2d 1560, 1569 (11th Cir. 1992).

4 District courts have the broad power of a court of equity to determine the
5 appropriate action in the administration and supervision of an equity receivership.
6 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
7 Circuit explained:

8 A district court's power to supervise an equity
9 receivership and to determine the appropriate action to be
10 taken in the administration of the receivership is
11 extremely broad. The district court has broad powers and
12 wide discretion to determine the appropriate relief in an
13 equity receivership. The basis for this broad deference to
the district court's supervisory role in equity
receiverships arises out of the fact that most receiverships
involve multiple parties and complex transactions. A
district court's decision concerning the supervision of an
equitable receivership is reviewed for abuse of discretion.

14 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
15 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
16 and 'we generally uphold reasonable procedures instituted by the district court that
17 serve th[e] purpose' of orderly and efficient administration of the receivership for
18 the benefit of creditors."). Accordingly, the Court has broad discretion in the
19 administration of the receivership estate and the disposition of receivership assets.

20 **A. The Court's Authority to Approve Sales**

21 It is widely accepted that a court of equity having custody and control of
22 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*
23 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
24 and wide discretion to determine relief in an equity receivership). "The power of
25 sale necessarily follows the power to take possession and control of and to preserve
26 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
27 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*
28 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)

(citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity orders property in its custody to be sold, the court itself as vendor confirms the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 487 (3d ed. 1992).

"A court of equity, under proper circumstances, has the power to order a receiver to sell property free and clear of all encumbrances." *Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992). To that end, a federal court is not limited or deprived of any of its equity powers by state statute. *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute allowing time to redeem property after a foreclosure sale not applicable in a receivership sale).

Generally, when a court-appointed receiver is involved, the receiver, as agent for the court, should conduct the sale of the receivership property. *Blakely Airport Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357 (9th Cir. 1925).

B. 28 U.S.C. § 2001

Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of real property under subsection (a) and specific requirements for private sales of real property under subsection (b). Although both involve unnecessary cost and delay, the cost and delay of a public sale are significantly less than those for a private sale. *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013) ("Section 2001 sets out two possible courses of action: (1) property may be sold in

1 public sale; or (2) property may be sold in a private sale, provided that three separate
2 appraisals have been conducted, the terms are published in a circulated newspaper
3 ten days prior to sale, and the sale price is no less than two-thirds of the valued
4 price."). Therefore, by proceeding under Section 2001(a), the receivership estate
5 can avoid the significant costs and delay of (a) the Court having to appoint three
6 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

7 The requirements of a public sale under Section 2001(a) are that notice of the
8 sale be published as proscribed by Section 2002 and a public auction be held at the
9 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*
10 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015); *SEC v.*
11 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at *5 (M.D. Fla. 2007). In terms of
12 publication of notice, Section 2002 provides:

13 A public sale of realty or interest therein under any order,
14 judgment or decree of any court of the United States shall
15 not be made without notice published once a week for at
16 least four weeks prior to the sale in at least one newspaper
regularly issued and of general circulation in the county,
state, or judicial district of the United States wherein the
realty is situated.

17 If such realty is situated in more than one county, state,
18 district or circuit, such notice shall be published in one or
19 more of the counties, states, or districts wherein it is
situated, as the court directs. The notice shall be
substantially in such form and contain such description of
20 the property by reference or otherwise as the court
approves. The court may direct that the publication be
made in other newspapers.

21 This section shall not apply to sales and proceedings under
22 Title 11 or by receivers or conservators of banks appointed
23 by the Comptroller of the Currency.

24 The notice of sale is sufficient if it describes the property and the time, place,
25 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
26 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
27 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
28 binding offer to purchase the [property]; and (ii) demonstrate . . ., to the satisfaction

1 of the Receiver, that it has the current ability to consummate the purchase of the
2 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
3 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

4 V. DISCUSSION

5 The proposed sale to Buyer pursuant to the Agreement is in the best interests
6 of the estate. With the assistance of Broker, the Freetrade Property has been fully
7 exposed to the market since May 2016. The proposed purchase price is higher than
8 the 2015 BOV for the property (\$180,957) and within \$10,000 of the Court-
9 approved list price (\$260,000). Hebrank Decl., ¶ 7.

10 Moreover, the proposed sale is subject to overbid to further ensure the highest
11 and best price is obtained. The Receiver proposes to conduct a public auction
12 consistent with the requirements of Section 2001(a). Specifically, the Receiver will
13 publish the following notice of the sale once a week for four weeks in the San Diego
14 Union-Tribune:

15 In the action pending in U.S. District Court for the
16 Southern District of California, Case No. 12-CV-2164-
17 GPC-JMA, Securities and Exchange Commission v.
18 Louis V. Schooler et al., notice is hereby given that the
19 court-appointed receiver will conduct a public auction for
20 the undeveloped real property with APNs 652-110-06-00,
21 652-110-09-00, 652-110-10-00, and 652-110-11-00,
22 located in the City of San Diego, San Diego County,
23 California. Sale is subject to Court confirmation after the
24 auction is held. Minimum bid price is \$265,000. The
25 auction will take place on April 5, 2017, at 1:30 p.m. in
26 front of the entrance to the United States Courthouse,
27 221 W. Broadway, San Diego, California. To be allowed
28 to participate in the auction, prospective purchasers must
meet certain bid qualification requirements, including
submitting a signed purchase and sale agreement, an
earnest money deposit of \$5,000, and proof of funds. All
bidders must be qualified by 5:00 p.m. PST on April 3, by
submitting the required materials to the receiver at
401 W. A Street, Suite 1830, San Diego, California,
92101. If interested in qualifying as a bidder, please
contact Geno Rodriguez at (619) 567-7223 or
grodriguez@ethreadvisors.com or Thomas C. Hebrank,
at thebrank@ethreadvisors.com.

1 In order to conduct an orderly auction and provide sufficient time for the publication
2 of notices discussed above, the Receiver will require bidders to complete the above
3 steps by April 3, 2017 ("Bid Qualification Deadline"), and conduct the live public
4 auction on April 5, 2017, immediately in front of the courthouse. Hebrank Decl.,
5 ¶ 8.

6 The Receiver will inform all interested persons of the opportunity to overbid
7 at the public auction, provided they qualify themselves to bid by the Bid
8 Qualification Deadline by (a) signing a purchase and sale agreement for the
9 properties on the same terms and conditions as Buyer, but with a purchase price of
10 at least \$265,000, (b) providing the Receiver with an earnest money deposit of
11 \$5,000, and (c) providing proof of funds necessary to close the sale transaction in
12 the form of a current bank statement, cashier's check delivered to the Receiver, or
13 other evidence deemed sufficient by the Receiver.⁴ Hebrank Decl., ¶ 9.

14 In the event one or more prospective purchasers qualify themselves to bid, the
15 auction will be conducted by the Receiver as noted above and bids will be allowed
16 in increments of \$1,000. The Receiver will then file a notice advising the Court of
17 the result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming
18 the sale. Earnest money deposits provided by bidders who are unsuccessful will be
19 promptly returned to them. In the event no prospective purchasers qualify
20 themselves to bid by the Bid Qualification Deadline, the Receiver will notify the
21 Court and seek entry of an order approving the sale to Buyer. Hebrank Decl., ¶ 10.

22 With respect to Broker's commission, Broker has worked diligently to broadly
23 advertise the Property for sale and market the Property to prospective purchasers,
24 including to potential overbidders after the Agreement was signed. The listing
25 agreement was approved as being consistent with industry standards for
26

27 ⁴ In the event an investor or group of investors seeks to qualify to overbid, the
28 Receiver will allow the investor(s) to include their projected distributions under
the approved One Pot Approach in their bid.

1 commissions paid to brokers for sales of undeveloped land. Accordingly, the
2 Receiver should be authorized to pay Broker the commission amount in accordance
3 with the listing agreement. Hebrank Decl., ¶ 11.

4 **VI. CONCLUSION**

5 For the reasons discussed above, the Receiver requests (a) approval of the sale
6 of the Freetrade Property to Buyer pursuant to the Agreement attached to the
7 Hebrank Declaration as Exhibit A, (b) authority to take all steps necessary to close
8 the sale, and (c) authority to pay Broker's commission as described above.

9
10
11 Dated: March 10, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

12
13 By: /s/ Edward Fates

14 EDWARD G. FATES
15 Attorneys for Receiver
16 THOMAS C. HEBRANK
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14 SECURITIES AND EXCHANGE
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18 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
19 FINANCIAL PLANNING
CORPORATION,

20 Defendants.
21

Case No. 3:12-cv-02164-GPC-JMA

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SALE OF
FREETRADE/SUNTEC/VIA 188
PROPERTY AND AUTHORITY TO
PAY BROKER'S COMMISSION**

Date: April 14, 2017
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 I, Thomas C. Hebrank, declare:

2 1. I am the Court-appointed receiver for First Financial Planning
3 Corporation d/b/a Western Financial Planning Corporation ("Western"), its
4 subsidiaries, and the General Partnerships listed on Schedule 1 to the Preliminary
5 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities").
6 I make this declaration in support of my Motion for Approval of Sale of Freetrade/
7 Suntec/Via 188 Property and Authority to Pay Broker's Commission ("Motion"). I
8 have personal knowledge of the facts stated herein, and if called upon to do so, I
9 could and would personally and competently testify to them.

10 2. The properties in the receivership include certain parcels of
11 undeveloped land located in the Tecate area of San Diego County and known as the
12 Tecate properties. The Tecate properties consist of seven separate properties, three
13 of which are owned by multiple GPs as co-tenants and four of which are owned
14 outright by one GP. One of the properties is owned by Freetrade Partners, Suntec
15 Partners, and Via 188 Partners (collectively, "Freetrade"), each of which own an
16 undivided 33.33% interest in the property ("Freetrade Property").

17 3. In or around May 2016, pursuant to the Court's approval of my
18 recommendation, Real Blue Properties, a licensed broker located in Carlsbad,
19 California ("Broker"), promptly listed and advertised the Freetrade Property for sale
20 and marketed it to interested parties.

21 4. In January 2017, I received an all cash offer to purchase the Freetrade
22 Property for \$250,000 from Gerardo Aceves ("Buyer"). The offer was reasonable in
23 relation to the 2015 broker opinion of values ("BOVs") of the Freetrade Property.¹

24 _____
25 ¹ The Xpera Group valuation range (\$346,084-\$519,126), which was not provided
26 until after the Freetrade Property had been listed for sale, assumed the Tecate
27 properties would be held for an undetermined amount of time until San Diego
28 County finalized its General Plan for the area, which could take many years. The
Court rejected the plan to hold the Tecate properties indefinitely while waiting
for a General Plan to be finalized. Dkt. No. 1304, p. 18. Accordingly, the Xpera
Group valuation range has no bearing on the value of the Freetrade Property in
today's market.

1 Accordingly, pursuant to the Court-approved Modified Orderly Sale Procedures, I
2 sent notice of the offer to investors,² consulted with Broker, and made a counter-
3 offer to Buyer in the amount of \$260,000 (the Court-approved list price). Buyer
4 countered back, stating that \$250,000 was his best and final offer, which I accepted,
5 subject to overbid and Court approval. The Buyer and I executed a Vacant Land
6 Purchase Agreement and Joint Escrow Instructions and an Addendum to Land
7 Purchase Agreement ("Agreement"). Buyer conducted his due diligence and
8 removed all contingencies (other than Court approval) on March 3, 2017.

9 5. In accordance with the Court-approved Modified Orderly Sale
10 Procedures, I hereby request approval of the sale to Buyer, pursuant to the
11 Agreement, a copy of which is attached hereto as Exhibit A. I will follow the
12 publication of notice, qualification of bidders, and public auction steps outlined in
13 the Motion. In the event one or more prospective purchasers qualify themselves to
14 bid, I will conduct an auction and subsequently file a notice advising the Court of
15 the result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming
16 the sale. In the event no prospective purchasers qualify themselves to bid, I will
17 notify the Court and seek entry of an order approving the sale to Buyer.

18 6. As noted above, pursuant to the Modified Orderly Sale Procedures
19 (Dkt. No. 1309), I provided notice of the offer from Buyer to investors via email
20 shortly after it was received. There were four responses total from investors, none
21 of which addressed the substance of the offer or my proposed response to the offer.

22 7. The proposed sale to Buyer pursuant to the Agreement is in the best
23 interests of the estate. With the assistance of Broker, the Freetrade Property has
24 been fully exposed to the market since May 2016. The proposed purchase price is
25 higher than the 2015 BOV for the property (\$180,957) and within \$10,000 of the
26 Court-approved list price (\$260,000).

27 _____
28 ² There were no responses from investors that addressed the substance of the offer
from Buyer or my proposed response to the offer.

1 8. The proposed sale is subject to overbid to further ensure the highest and
2 best price is obtained. I propose to conduct a public auction consistent with the
3 requirements of Section 2001(a). Specifically, I will publish the following notice of
4 the sale once a week for four weeks in the San Diego Union-Tribune:

5 In the action pending in U.S. District Court for the
6 Southern District of California, Case No. 12-CV-2164-
7 GPC-JMA, Securities and Exchange Commission v.
8 Louis V. Schooler et al., notice is hereby given that the
9 court-appointed receiver will conduct a public auction for
10 the undeveloped real property with APNs 652-110-06-00,
11 652-110-09-00, 652-110-10-00, and 652-110-11-00,
12 located in the City of San Diego, San Diego County,
13 California. Sale is subject to Court confirmation after the
14 auction is held. Minimum bid price is \$265,000. The
15 auction will take place on April 5, 2017, at 1:30 p.m. in
16 front of the entrance to the United States Courthouse,
17 221 W. Broadway, San Diego, California. To be allowed
to participate in the auction, prospective purchasers must
meet certain bid qualification requirements, including
submitting a signed purchase and sale agreement, an
earnest money deposit of \$5,000, and proof of funds. All
bidders must be qualified by 5:00 p.m. PST on April 3, by
submitting the required materials to the receiver at
401 W. A Street, Suite 1830, San Diego, California,
92101. If interested in qualifying as a bidder, please
contact Geno Rodriguez at (619) 567-7223 or
grodriguez@ethreadvisors.com or Thomas C. Hebrank,
at thebrank@ethreadvisors.com.

18 In order to conduct an orderly auction and provide sufficient time for the publication
19 of notices discussed above, I will require bidders to complete the above steps by
20 April 3, 2017 ("Bid Qualification Deadline"), and conduct the live public auction on
21 April 5, 2017, immediately in front of the courthouse.

22 9. I will inform all interested persons of the opportunity to overbid at the
23 public auction, provided they qualify themselves to bid by the Bid Qualification
24 Deadline by (a) signing a purchase and sale agreement for the properties on the
25 same terms and conditions as Buyer, but with a purchase price of at least \$265,000,
26 (b) providing me with an earnest money deposit of \$5,000, and (c) providing proof
27
28

1 of funds necessary to close the sale transaction in the form of a current bank
2 statement, cashier's check delivered to me, or other evidence I deem sufficient.³

3 10. In the event one or more prospective purchasers qualify themselves to
4 bid, I will conduct the auction as noted in the Motion and bids will be allowed in
5 increments of \$1,000. I will subsequently file a notice advising the Court of the
6 result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming the
7 sale. Earnest money deposits provided by bidders who are unsuccessful will be
8 promptly returned to them. In the event no prospective purchasers qualify
9 themselves to bid by the Bid Qualification Deadline, I will notify the Court and seek
10 entry of an order approving the sale to Buyer.

11 11. With respect to Broker's commission, Broker has worked diligently to
12 broadly advertise the Property for sale and market the Property to prospective
13 purchasers, including to potential overbidders after the Agreement was signed. The
14 listing agreement was approved as being consistent with industry standards for
15 commissions paid to brokers for sales of undeveloped land. Accordingly, I should
16 be authorized to pay Broker the commission amount in accordance with the listing
17 agreement.

18 I declare under penalty of perjury under the laws of the United States of
19 America that the foregoing is true and correct.

20 Executed this 10 day of March 2017, at San Diego, California.

21 
22 THOMAS C. HEBRANK

23
24
25
26
27 ³ In the event an investor or group of investors seeks to qualify to overbid, I will
28 allow the investor(s) to include their projected distributions under the approved
One Pot Approach in their bid.

EXHIBIT INDEX

Exhibit A	Vacant Land Purchase Agreement and Joint Escrow Instructions and Addendum to Land Purchase Agreement	7
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EXHIBIT A

EXHIBIT A



CALIFORNIA
ASSOCIATION
OF REALTORS®

VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

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

Date Prepared: January 17, 2017

1. OFFER:

- A. THIS IS AN OFFER FROM Gerardo Aceves ("Buyer"),
B. THE REAL PROPERTY to be acquired is Tecate Road 06, situated in
Tecate (City), San Diego (County), California, 91980 (Zip Code), Assessor's Parcel No. 652-110-06-00 ("Property").
Further Described As Tecate Road 06 Tecate CA 91980
C. THE PURCHASE PRICE offered is Two Hundred Fifty Thousand
Dollars \$ 250,000.00
D. CLOSE OF ESCROW shall occur on 21 (date) (or ☒ 21 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 RealBlue Properties (Print Firm Name) is the agent of (check one):
☒ the Seller exclusively; or ☐ both the Buyer and Seller.
Selling Agent Gerardo Ivan Kim-Fregoso, Broker (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): ☒ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller.
C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

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

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 5,000.00
(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, ☐ cashier's check, ☐ personal check, ☐ other _____ within 3 business days after Acceptance (or _____);
OR (2) ☐ Buyer Deposit with Agent: Buyer has given the deposit by personal check (or _____) to the agent submitting the offer (or to _____), made payable to _____.
The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or _____).
Deposit checks given to agent shall be an original signed check and not a copy.

(Note: Initial and increased deposits 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 \$ _____
This loan will be conventional financing or ☐ FHA, ☐ VA, ☐ 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.
(3) FHA/VA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or _____) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this transaction.

E. ADDITIONAL FINANCING TERMS:

Buyer's Initials (GA) (_____)
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Seller's Initials (GA) (_____)



VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 1 OF 11)

Gerardo Ivan Kim-Fregoso, Broker, 1990 Isla del Carmen Way San Ysidro, CA 92173
Gerardo Ivan Kim-Fregoso

Phone: 619-608-4786 Fax: _____
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Tecate Road 06

Property Address: Tecate Road 06, Tecate, 91980

Date: January 17, 2017

- F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE** in the amount of \$ 245,000.00
to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- G. PURCHASE PRICE (TOTAL):** \$ 250,000.00
- 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.)
- 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 19B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or) Days After Acceptance.
- J. LOAN TERMS:**
- (1) **LOAN APPLICATIONS:** Within 3 (or) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. (☐ Letter attached.)
- (2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a **contingency** of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement.
- (3) **LOAN CONTINGENCY REMOVAL:**
Within 21 (or) Days After Acceptance, Buyer shall, as specified in paragraph 19, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (4) ☐ **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
- (5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.
- K. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.
- L. SELLER FINANCING:** The following terms (or ☐ the terms specified in the attached Seller Financing Addendum) (C.A.R. Form SFA) apply ONLY to financing extended by Seller under this Agreement.
- (1) **BUYER'S CREDIT-WORTHINESS:** Buyer authorizes Seller and/or Brokers to obtain, at Buyer's expense, a copy of Buyer's credit report. Within 7 (or) Days After Acceptance, Buyer shall provide any supporting documentation reasonably requested by Seller.
- (2) **TERMS:** Buyer's promissory note, deed of trust and other documents as appropriate shall incorporate and implement the following additional terms: (i) the maximum interest rate specified in paragraph 3D shall be the actual fixed interest rate for Seller financing; (ii) deed of trust shall contain a RE UEST FOR NOTICE OF DEFAULT on senior loans; (iii) Buyer shall sign and pay for a RE UEST FOR NOTICE OF DELIN UENCY prior to Close Of Escrow and at any future time if requested by Seller; (iv) note and deed of trust shall contain an acceleration clause making the loan due, when permitted by law and at Seller's option, upon the sale or transfer of the Property or any interest in it; (v) note shall contain a late charge of 6 of the installment due (or) if the installment is not received within 10 days of the due date; (vi) title insurance coverage in the form of a joint protection policy shall be provided insuring Seller's deed of trust interest in the Property (any increased cost over owner's policy shall be paid by Buyer); and (vii) tax service shall be obtained and paid for by Buyer to notify Seller if property taxes have not been paid.
- (3) **ADDED, DELETED OR SUBSTITUTED BUYERS:** The addition, deletion or substitution of any person or entity under this Agreement or to title prior to Close Of Escrow shall require Seller's written consent. Seller may grant or withhold consent in Seller's sole discretion. Any additional or substituted person or entity shall, if requested by Seller, submit to Seller the same documentation as required for the original named Buyer. Seller and/or Brokers may obtain a credit report, at Buyer's expense, on any such person or entity.
- M. ASSUMED OR "SUBJECT TO" FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. Seller shall, within the time specified in paragraph 19, provide Copies of all applicable notes and deeds of trust, loan balances and current interest rates to Buyer. Buyer shall then, as specified in paragraph 19B(3), remove this contingency or cancel this Agreement. Differences between estimated and actual loan balances shall be adjusted at Close Of Escrow by cash down payment. Impound accounts, if any, shall be assigned and charged to Buyer and credited to Seller. Seller is advised that Buyer's assumption of an existing loan may not release Seller from liability on that loan. If this is an assumption of a VA Loan, the sale is contingent upon Seller being provided a release of liability and substitution of eligibility, unless otherwise agreed in writing. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

Buyer's Initials (GA) ()

Seller's Initials (TH) ()



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VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 2 OF 11)

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Tecate Road 06

Property Address: Tecate Road 06, Tecate, 91980

Date: January 17, 2017

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. ☐ **MANUFACTURED HOME PURCHASE:** The purchase of the Property is contingent upon Buyer acquiring a personal property manufactured home to be placed on the Property after Close Of Escrow. Buyer ☐ has ☐ has not entered into a contract for the purchase of a personal property manufactured home. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement, (or ☐ this contingency shall remain in effect until the Close Of Escrow of the Property).

6. ☐ **CONSTRUCTION LOAN FINANCING:** The purchase of the Property is contingent upon Buyer obtaining a construction loan. A draw from the construction loan ☐ will ☐ will not be used to finance the Property. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement (or ☐ this contingency shall remain in effect until Close Of Escrow of the Property).

7. ADDENDA AND ADVISORIES:

A. ADDENDA: ☐ Addendum # _____ (C.A.R. Form ADM)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Septic, 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 BIA)
☐ Probate Advisory (C.A.R. Form PA) ☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
☐ Trust Advisory (C.A.R. Form TA) ☐ REO Advisory (C.A.R. Form REO)
☐ Short Sale Information and Advisory (C.A.R. Form SSIA) ☐ Other _____

8. **OTHER TERMS:** Residential Purchase Agreement also includes this APN's: 652-110-09-00, 652-110-10-00, 652-110-11-00

9. ALLOCATION OF COSTS

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

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

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

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

B. ESCROW AND TITLE:

(1) (a) ☒ Buyer ☒ Seller shall pay escrow fee 50% Buyer 50% Seller

(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 18E _____

(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.)

C. 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 Homeowners' Association ("HOA") transfer fee _____

(4) Seller shall pay HOA fees for preparing all documents required to be delivered by Civil Code §4525.

(5) Buyer to pay for any HOA certification fee.

(6) ☐ Buyer ☐ Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.

(7) ☐ Buyer ☐ Seller shall pay for any private transfer fee _____

(8) ☒ Buyer ☐ Seller shall pay for Transaction Coordinator \$450

(9) ☐ Buyer ☐ Seller shall pay for _____

10. CLOSING AND POSSESSION: Possession shall be delivered to Buyer: (i) ☐ at 6 PM or (☐ AM/ ☐ PM) on the date of Close

Of Escrow; (ii) ☐ no later than _____ calendar days after Close Of Escrow; or (iii) ☐ at ☐ AM/ ☐ PM on _____

The Property shall be unoccupied, unless otherwise agreed in writing. Seller shall provide keys and/or means to operate all Property locks. If Property is located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

11. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. **NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in 11B or C.

Buyer's Initials (GA) (_____)

Seller's Initials (JA) (_____)

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VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 3 OF 11)

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Tecate Road 06



Property Address: Tecate Road 06, Tecate, 91980

Date: January 17, 2017

B. ITEMS INCLUDED IN SALE:

- (1) All E-ISTING fixtures and fittings that are attached to the Property;
(2) The following items: _____

- (3) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.
(4) All items included shall be transferred free of liens and without Seller warranty.

C. ITEMS EXCLUDED FROM SALE: _____

12. STATUTORY AND OTHER DISCLOSURES AND CANCELLATION RIGHTS:

- A. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 19A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- B. WITHHOLDING TAXES:** Within the time specified in paragraph 19A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or S).
- C. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
- D. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
- E. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
(1) **SELLER HAS:** 7 (or ____) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form VL ____).
(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or ____) Days After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 19B(3). The Party specified in paragraph 9, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

13. SELLER DOCUMENTATION AND ADDITIONAL DISCLOSURE:

- A. Within the time specified in paragraph 19, if Seller has actual knowledge, Seller shall provide to Buyer, in writing, the following information:**
(1) **LEGAL PROCEEDINGS:** Any lawsuits by or against Seller, threatening or affecting the Property, including any lawsuits alleging a defect or deficiency in the Property or common areas, or any known notices of abatement or citations filed or issued against the Property.
(2) **AGRICULTURAL USE:** Whether the Property is subject to restrictions for agricultural use pursuant to the Williamson Act (Government Code §§51200-51295).
(3) **DEED RESTRICTIONS:** Any deed restrictions or obligations.
(4) **FARM USE:** Whether the Property is in, or adjacent to, an area with Right to Farm rights (Civil Code §3482.5 and §3482.6).
(5) **ENDANGERED SPECIES:** Presence of endangered, threatened, 'candidate' species, or wetlands on the Property.
(6) **ENVIRONMENTAL HAZARDS:** Any substances, materials, or products that may be an environmental hazard including, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the Property.
(7) **COMMON WALLS:** Any features of the Property shared in common with adjoining landowners, such as walls, fences, roads, and driveways, and agriculture and domestic wells whose use or responsibility for maintenance may have an effect on the Property.
(8) **LANDLOCKED:** The absence of legal or physical access to the Property.
(9) **EASEMENTS/ENCROACHMENTS:** Any encroachments, easements or similar matters that may affect the Property.
(10) **SOIL FILL:** Any fill (compacted or otherwise), or abandoned mining operations on the Property.
(11) **SOIL PROBLEMS:** Any slippage, sliding, flooding, drainage, grading, or other soil problems.
(12) **EARTHQUAKE DAMAGE:** Major damage to the Property or any of the structures from fire, earthquake, floods, or landslides.
(13) **ZONING ISSUES:** Any zoning violations, non-conforming uses, or violations of "setback" requirements.
(14) **NEIGHBORHOOD PROBLEMS:** Any neighborhood noise problems, or other nuisances.
- B. RENTAL AND SERVICE AGREEMENTS:** Within the time specified in paragraph 19, Seller shall make available to Buyer for inspection and review, all current leases, rental agreements, service contracts and other related agreements, licenses, and permits pertaining to the operation or use of the Property.
- C. ☐ TENANT ESTOPPEL CERTIFICATES:** Within the time specified in paragraph 19, Seller shall deliver to Buyer 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.

Buyer's Initials (GA) (_____)

Seller's Initials (JN) (_____)

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VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 4 OF 11)

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Tecate Road 06



Property Address: **Tecate Road 06, Tecate, 91980**

Date: **January 17, 2017**

- D. MELLO-ROOS TAX; 1915 BOND ACT:** Within the time specified in paragraph 19, Seller shall: (i) make a good faith effort to obtain a notice from any local agencies that levy a special tax or assessment on the Property (or, if allowed, substantially equivalent notice), pursuant to the Mello-Roos Community Facilities Act, and Improvement Bond Act of 1915, and (ii) promptly deliver to Buyer any such notice obtained.
- E. SELLER VACANT LAND QUESTIONNAIRE:** Seller shall, within the time specified in paragraph 19, complete and provide Buyer with a Seller Vacant Land Questionnaire (C.A.R. Form VL).
- 14. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide 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.**
- 15. CHANGES DURING ESCROW:**
- A.** Prior to Close Of Escrow, Seller may engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 15B: (i) rent or lease any 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.** At least 7 (or ____) Days prior to any Proposed Changes, Seller shall give written notice to Buyer of such Proposed Changes. Within 5 (or ____) Days After receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes, in which case Seller shall not make the Proposed Changes.
- 16. CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
- A.** Seller shall, within the time specified in paragraph 19A, 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 19B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
- C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**
- 17. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A.** Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 19B. Within the time specified in paragraph 19B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). 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; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- B.** Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 19B, complete Buyer Investigations and, either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
- C. Buyer indemnify and Seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs of Buyer's Investigations. 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 injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination or cancellation of this Agreement and Close Of Escrow.
- D. BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE ITEMS SPECIFIED BELOW. IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY CONTAINS CONDITIONS THAT ARE NOT READILY APPARENT AND THAT MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT BROKERS DO NOT GUARANTEE, AND IN NO WAY ASSUME RESPONSIBILITY FOR, THE CONDITION OF THE PROPERTY. BROKERS HAVE NOT AND WILL NOT VERIFY ANY OF THE ITEMS IN THIS PARAGRAPH 17, UNLESS OTHERWISE AGREED IN WRITING.**
- E. SIZE, LINES, ACCESS AND BOUNDARIES:** Lot size, property lines, legal or physical access and boundaries including features of the Property shared in common with adjoining landowners, such as walls, fences, roads and driveways, whose use or responsibility for maintenance may have an effect on the Property and any encroachments, easements or similar matters that may affect the Property. (Fences, hedges, walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines may be verified by survey.) (Unless otherwise specified in writing, any numerical statements by Brokers regarding lot size are APPROXIMATIONS ONLY, which have not been and will not be verified, and should not be relied upon by Buyer.)
- F. ZONING AND LAND USE:** Past, present, or proposed laws, ordinances, referendums, initiatives, votes, applications and permits affecting the current use of the Property, future development, zoning, building, size, governmental permits and inspections. Any zoning violations, non-conforming uses, or violations of "setback" requirements. (Buyer should also investigate whether these matters affect Buyer's intended use of the Property.)
- G. UTILITIES AND SERVICES:** Availability, costs, restrictions and location of utilities and services, including but not limited to, sewerage, sanitation, septic and leach lines, water, electricity, gas, telephone, cable TV and drainage.

Buyer's Initials (GA) (_____)

Seller's Initials (JK) (_____)

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Tecate Road 06



Property Address: **Tecate Road 06, Tecate, 91980**

Date: **January 17, 2017**

- H. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel, oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, including mold (airborne, toxic or otherwise), fungus or similar contaminant, materials, products or conditions.
- I. **GEOLOGIC CONDITIONS:** Geologic/seismic conditions, soil and terrain stability, suitability and drainage including any slippage, sliding, flooding, drainage, grading, fill (compacted or otherwise), or other soil problems.
- J. **NATURAL HAZARD ZONE:** Special Flood Hazard Areas, Potential Flooding (Inundation) Areas, Very High Fire Hazard Zones, State Fire Responsibility Areas, Earthquake Fault Zones, Seismic Hazard Zones, or any other zone for which disclosure is required by Law.
- K. **PROPERTY DAMAGE:** Major damage to the Property or any of the structures or non-structural systems and components and any personal property included in the sale from fire, earthquake, floods, landslides or other causes.
- L. **NEIGHBORHOOD, AREA AND PROPERTY CONDITIONS:** Neighborhood or area conditions, including Agricultural Use Restrictions pursuant to the Williamson Act (Government Code §§51200-51295), Right To Farm Laws (Civil Code §3482.5 and §3482.6), schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, abandoned mining operations on the Property, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.
- M. **COMMON INTEREST SUBDIVISIONS: OWNER ASSOCIATIONS:** Facilities and condition of common areas (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others), Owners' Association that has any authority over the subject property, CC Rs, or other deed restrictions or obligations, and possible lack of compliance with any Owners' Association requirements.
- N. **SPECIAL TAX:** Any local agencies that levy a special tax on the Property pursuant to the Mello-Roos Community Facilities Act or Improvement Bond Act of 1915.
- O. **RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants and the right of a landlord to terminate a tenancy.
- P. **MANUFACTURED HOME PLACEMENT:** Conditions that may affect the ability to place and use a manufactured home on the Property.
18. **TITLE AND VESTING:**
- A. Within the time specified in paragraph 19, 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 19B. 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 (REOs), 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 off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
- C. Within the time specified in paragraph 19A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- 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 leasehold 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 "CLTA/ALTA Homeowner's Policy of Title Insurance", if applicable to the type of property and 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.
19. **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 3M, 7A, 8, 9, 12A, B, and E, 13, 16A and 18A. 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, reports, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory Disclosures and other disclosures Delivered by Seller in accordance with paragraph 12A.
- (2) Within the time specified in paragraph 19B(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 requests.
- (3) By the end of the time specified in paragraph 19B(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 19A, then Buyer has **5 (or _____) Days** After Delivery of any such items, or the time specified in paragraph 19B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

Buyer's Initials (GA) (_____)

Seller's Initials (JH) (_____)



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Property Address: Tecate Road 06, Tecate, 91980

Date: January 17, 2017

- (4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 19B(1) and before Seller cancels, if at all, pursuant to paragraph 19C, 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 19C(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 NBP), 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 NBP, may cancel this Agreement if, 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 notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3 (1); (iv) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; (v) Return Statutory Disclosures as required by paragraph 12A; or (vi) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 27B; or (vii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. 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 NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2(or) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 19.
- 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 Repairs or corrections 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 duly exercised 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 BDRD or SDRD). 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).**
- 20. 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.
- 21. 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).
- 22. 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/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.
- 23. 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

Buyer's Initials (GA) ()

Seller's Initials (*DN*) ()



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Tecate Road 06

Property Address: Tecate Road 06, Tecate, 91980Date: January 17, 2017

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). TA BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

24. 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. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay 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, title and other desired assistance from appropriate professionals.

25. REPRESENTATIVE CAPACITY: If one or more Parties is signing the Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 37 or 38 and attach a Representative Capacity Signature Addendum (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

26. 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, 5, 6, 7A, 8, 9, 12B, 18, 19G, 23, 24A, 25, 26, 32, 35, 36, 37, 38 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 24A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 9B(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or ____) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 9, 12 or elsewhere in this Agreement.
- 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 12B, 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 24A and paragraph D of the section titled Real Estate Brokers on page 11.** Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 24A, 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.**

Buyer's Initials (GA) (_____)Seller's Initials (JH) (_____)

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Tecate Road 06

Property Address: Tecate Road 06, Tecate, 91980

Date: January 17, 2017

27. 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 GA

Seller's Initials TH

28. 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 28C.

- 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 28C.

"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 GA

Seller's Initials TH

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 §2985; (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.

29. 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.

30. MULTIPLE LISTING SERVICE ("MLS"): Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.

Buyer's Initials (GA) (_____)

Seller's Initials (TH) (_____)

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VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 9 OF 11)

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Tecate Road #6



Property Address: Tecate Road 06, Tecate, 91980

Date: January 17, 2017

- 31. 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 28A.
- 32. 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 AOAA).
- 33. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 34. 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 initialed by all Parties or if incorporated by mutual agreement in a counteroffer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
- 35. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 36. 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.
 - 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" 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 pest control), alterations, replacements, modifications or retrofitting 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.
- 37. 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 _____, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by _____ ☐ AM/ ☐ PM, on _____ (date)).

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

Date 01/18/2017 20:59:07 BUYER G A
 (Print name) Gerardo Aceves
 Date _____ BUYER _____
 (Print name) _____

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

Buyer's Initials (GA) (_____)

Seller's Initials (TH) (_____)

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VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 10 OF 11)

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Tecate Road 06



Property Address: **Tecate Road 06, Tecate, 91980**

Date: **January 17, 2017**

38. 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 **1/17/17** SELLER **Thomas C Hebrank**
(Print name) **Thomas C. Hebrank, Receiver**

Date _____ SELLER _____
(Print name) _____

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

() (Do not initial if making a counter offer.) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) _____ at _____
(Initials) ☐ AM/ ☐ 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.

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 CBC). 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) **Gerardo Ivan Kim-Fregoso, Broker** CalBRE Lic. # **01489642**
By **Gerardo Ivan Kim-Fregoso** CalBRE Lic. # **01489642** Date **01/18/2017 21:00:28**
By _____ CalBRE Lic. # _____ Date _____
Address **1990 Isla del Carmen Way** City **San Ysidro** State **CA** Zip **92173-1218**
Telephone **(619) 608-4786** Fax _____ E-mail **gikf14@hotmail.com**
Real Estate Broker (Listing Firm) **RealBlue Properties** CalBRE Lic. # _____
By **Todd Busch** CalBRE Lic. # **01935333** Date **01/19/2017 08:06 PM GMT**
By _____ CalBRE Lic. # _____ Date _____
Address **2802 State Street** City **Carlsbad** State **CA** Zip **92008**
Telephone **(760) 890-1100** Fax _____ E-mail **todd@tbuschrealestate.com**

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), counter offer numbers _____ ☐ Seller's Statement of Information and _____, and agrees to act as Escrow Holder subject to paragraph 26 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

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

Escrow Holder _____ 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 **01/19/2017 08:06 PM GMT** (date).
Broker or Designee Initials _____

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

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*525 South Virgil Avenue, Los Angeles, California 90020

VLPA REVISED 11/14 (PAGE 11 OF 11)

Buyer's Acknowledge that page 11 is part of this Agreement (**GA**) ()

Reviewed by
Broker or Designee _____



VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 11 OF 11)

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Tecate Road 06



CALIFORNIA
ASSOCIATION
OF REALTORS®

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Selling Firm to Buyer)
(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/14)

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(k) and (m).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant Gerardo Aceves 01/18/2017 20:59:07 Date _____
Gerardo Aceves

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ Date _____

Agent Gerardo Ivan Kim-Fregoso, Broker BRE Lic. # 01489642

By Gerardo Ivan Kim-Fregoso Real Estate Broker (Firm) 01/18/2017 21:00:28 BRE Lic. # 01489642 Date _____
(Salesperson or Broker-Associate) Gerardo Ivan Kim-Fregoso

Agency Disclosure Compliance (Civil Code §2079.14):

- When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
- When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here:

Thomas C. Hebrank 2/8/17
Seller/Landlord Date _____ Seller/Landlord Date _____
Thomas C. Hebrank, Receiver

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AD REVISED 12/14 (PAGE 1 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Gerardo Ivan Kim-Fregoso, Broker, 1990 Isla del Carmen Way San Ysidro, CA 92173 Phone: 619-608-4786 Fax: Tecate Road 06
Gerardo Ivan Kim-Fregoso Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com

Reviewed by _____ Date _____



CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE. SAMPLE ONLY) _____ is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.
(Name of Listing Agent)
(DO NOT COMPLETE. SAMPLE ONLY) _____ is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or
(Name of Selling Agent if not the same as the Listing Agent) ☐ both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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AD REVISED 12/14 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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Tecate Road 06

Reviewed by _____ Date _____





BUYER'S INSPECTION ADVISORY

(C.A.R. Form BIA, Revised 11/14)

Property Address: **Tecate Road 06, Tecate, 91980**

("Property").

1. IMPORTANCE OF PROPERTY INVESTIGATION: The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.

2. BROKER OBLIGATIONS: Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.

3. YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

- A. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and nonstructural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
- B. SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
- C. WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
- D. SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
- E. WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
- F. ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
- G. EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
- H. FIRE, HAZARD AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
- I. BUILDING PERMITS, ZONING AND GOVERNMENTAL REQUIREMENTS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size.
- J. RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
- K. SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.
- L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS:** Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory.

Buyers are encouraged to read it carefully.

Buyer G A Gerardo Aceves 01/18/2017 20:59:07 Buyer _____

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RES

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BIA REVISED 11/14 (PAGE 1 OF 1)

BUYER'S INSPECTION ADVISORY (BIA PAGE 1 OF 1)

Gerardo Ivan Kim-Fregoso, Broker, 1990 Isla del Carmen Way San Ysidro, CA 92173 Phone: 619-688-4786 Fax: Tecate Road 06
Gerardo Ivan Kim-Fregoso Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com



CALIFORNIA
ASSOCIATION
OF REALTORS®

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, 11/14)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: (a) Broker, without the prior written consent of the Buyer, will not disclose to seller that the Buyer is willing to pay a price greater than the offered price; (b) Broker, without the prior written consent of the seller, will not disclose to the buyer that seller is willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller Thomas C Hebrank Thomas C. Hebrank, Receiver Date 2/8/17
Seller _____ Date _____

Buyer G A Gerardo Aceves Date _____
Buyer _____ Date _____

Real Estate Broker (Firm) RealBlue Properties CalBRE Lic # _____ Date _____
By Gerald Todd Busch CalBRE Lic # 01935333 Date 01/19/2017 08:06 PM GMT
Todd Busch

Real Estate Broker (Firm) Gerardo Ivan Kim-Fregoso, Broker CalBRE Lic # 01489642 Date _____
By Gerardo Ivan Kim-Fregoso 01/18/2017 21:00:28 CalBRE Lic # 01489642 Date _____
Gerardo Ivan Kim-Fregoso

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PRBS 11/14 (PAGE 1 OF 1)

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)

Gerardo Ivan Kim-Fregoso, Broker, 1999 Isla del Carmen Way San Ysidro, CA 92173 Phone: 619-608-4786 Fax: _____ Tecate Road 06
Gerardo Ivan Kim-Fregoso Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com

ADDENDUM TO LAND PURCHASE AGREEMENT

This Addendum to Land Purchase Agreement (this "**Addendum**") is attached to, and a part of, that certain Land Purchase Agreement (the "**Agreement**") dated as of January 17, 2017 (the "**Effective Date**") by and between Freetrade Partners, Suntec Partners and Via 188 Partners, as "**Seller**," by and through Thomas C. Hebrank, solely in his capacity as Receiver ("**Receiver**"), appointed by the United States District Court for the Southern District of California (the "**Court**"), and Gerardo Aceves, an individuals, as "**Buyer**", with respect to that certain unimproved real property located in an unincorporated portion of San Diego County, California consisting of approximately 99.58 acres of land and referred to as San Diego County Assessor Parcel Nos. 652-110-06-00, 652-110-09-00, 652-110-10-00, 652-110-11-00 (the "**Property**"). In the event of any conflict between the provisions of this Addendum and those of the Agreement, the provisions of this Addendum shall prevail. For convenience, all capitalized terms not otherwise defined in this Addendum have the same meaning ascribed to them in the Agreement.

1. As-Is Sale

A. Independent Investigation. Subject to the contingency period specified in the Agreement, Buyer shall have independently investigated, analyzed and appraised the value, profitability and condition of the Property, including, without limitation, the geological and soil condition of the Property, the fitness or suitability of the Property for Buyer's intended use of the Property and all environmental matters relating to the Property (including, but not limited to, the presence or absence of hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws), without relying on any representations of any kind (whether oral or written, express or implied) made by Seller to Buyer. Buyer is purchasing the Property in its "AS IS, WHERE IS" condition as of the Effective Date solely in reliance upon Buyer's own investigations and evaluation thereof and without any representation or warranty by Seller as to the condition of the Property.

B. AS-IS Purchase; No Side Agreements Or Representations. Buyer acknowledges and agrees that Buyer has independently and personally inspected the Property, and the improvements, entitlements, plans and specifications related to the Property, Buyer has elected to go forward with the purchase of the Property on the basis of such personal examinations and inspections as Buyer has deemed appropriate to make. Buyer agrees that **AS A MATERIAL INDUCEMENT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY SELLER, BUYER IS PURCHASING THE PROPERTY IN AN "AS IS" AND "WHERE IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR, WITH ALL FAULTS.** No person acting on behalf of Seller is authorized to make, and by execution hereof Buyer acknowledges and agrees that, except as specifically provided in this agreement, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of and to, concerning or with respect to:

- (1) the value of the Property;
- (2) the income to be derived from the Property;

(3) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon, including without limitation any development of the Property;

(4) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;

(5) the manner, quality, state of repair, or lack of repair, of the Property;

(6) the nature quality or condition of the Property including, without limitation, the water, soil and geology;

(7) the compliance of or by the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any applicable governmental authority or body;

(8) the manner, condition, or quality of the construction or materials, if any, incorporated into the Property;

(9) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including but not limited to, the Endangered Species Act;

(10) the presence or absence of hazardous or toxic substances at, on, under, or adjacent to the Property;

(11) the content, completeness or accuracy of the due diligence materials, including any informational package, document list or other materials prepared by Seller;

(12) the conformity of the improvements to any plans or specifications for the Property, including any plans and specifications that may have been or may be provided to Buyer;

(13) the conformity of the Property to past, current or future applicable zoning or building requirements;

(14) deficiency of any undershoring;

(15) deficiency of any drainage;

(16) the existence of land use zoning or building entitlements affecting the Property;

(17) deficiency of any access to the Property or any portion thereof; and

(18) with respect to any other matter concerning the Property, except as may be otherwise expressly stated herein, including any and all such matters referenced discussed or disclosed in any documents delivered by Seller to Buyer, in any public records of any governmental agency, entity or utility company, or in any other documents available to Buyer.

Buyer acknowledges and agrees that the opportunity to inspect the Property and review information and documentation respecting the Property as provided in this Agreement is sufficient to allow the Buyer to make an adequate investigation of the Property and that Buyer is relying solely on its own investigation of the Property and review of such information and documentation, and not on any information provided or to be provided by Seller. Buyer further acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of Seller with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and make no representations as to the accuracy or completeness of such information except as may otherwise be provided herein. Buyer agrees to fully and irrevocably release all such sources of information and preparers of information and documentation to the extent such sources or preparers are Seller, or its employees, members, officers, directors, representatives, agents, servants, attorneys, affiliates, parent companies, subsidiaries, successors or assigns, from any and all claims that it may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property or the operation thereof furnished by any of the foregoing entities and individuals or any other individual or entity. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS-IS" condition and basis, with all faults, and that Seller has no obligations to make repairs, replacements or improvements.

C. NO LIABILITY TO RECEIVER. WITHOUT LIMITATION OF THE FOREGOING, AS AN ESSENTIAL INDUCEMENT TO RECEIVER TO ENTER INTO THIS AGREEMENT, AND AS PART OF THE DETERMINATION OF THE CONSIDERATION GIVEN HEREUNDER, BUYER ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

(1) BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS AGREEMENT SOLELY IN CONNECTION WITH HIS OR HER DUTIES AS RECEIVER PURSUANT TO THE ORDERS. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER PURSUANT TO THE ORDERS.

(2) NO PROVISION OF THIS AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PROPERTY UPON RECEIVER, NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE PROPERTY BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PROPERTY OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

D. Survival. The provisions of this Section 1 shall survive the closing of the Agreement.

2. Release and Indemnity

A. Release. To the maximum extent permitted by law, Buyer, on behalf of itself and its past, present and future agents, representatives, partners, shareholders, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs and executors and assigns (collectively, "**Buyer's Parties**"), hereby releases and forever discharges Seller, and each of their respective past, present and future agents (including Receiver and Broker), representatives, partners, attorneys, members, shareholders, principals, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs, executors and assigns (collectively, "**Indemnitees**"), from and against all claims, rights, remedies, recourse or other basis for recovery, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs) ("**Claims**"), whether direct or indirect, known or unknown, foreseen, whether before or after the Closing Date, including without limitation any loss, damage, injury, illness, death or other claim attributable to: (1) the use of the Property or any part thereof; (2) a defect in the design or construction of any improvements on or about the Property or the physical condition of the Property, including without limitation the grading of the Property or land adjacent to the Property, whether or not performed by an Indemnatee, and any surface and subsurface conditions; (3) the presence on the Property of any threatened or endangered species, or any archaeological sites, artifacts or other matters of archaeological significance, or any hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws including, without limitation, all claims in tort or contract and any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property owners for environmental matters; (4) any act, omission or representation of Buyer or any of Buyer's Parties; (5) any accident or casualty on the Property caused by or attributable to the acts or omissions of any Indemnitees, Buyer or Buyer's Parties on or about the Property; (6) a violation or alleged violation by any Indemnatee, Buyer, or Buyer's Parties of any law now or hereinafter enacted; (7) a slope failure or surface or subsurface geologic or groundwater condition caused by or attributable to any Indemnatee, Buyer or Buyer's Parties; (8) the design, construction, engineering or other, work with respect to the Property provided or performed by or caused by or attributable to any Indemnatee, Buyer or Buyer's Parties, whether before or after the Closing Date; (9) any other cause whatsoever in connection with Buyer's use of the Property or Buyer's performance under the Agreement or any of the instruments executed and delivered at Closing in connection herewith; (10) any breach by Buyer in the performance of its obligations under this Agreement or the other instruments executed and delivered at Closing in connection herewith; or (11) the application of the principles of strict liability in connection with the Property (collectively, the "**Released Claims**"). Notwithstanding the foregoing, the Buyer shall not be required to or be deemed to have waived any Claims against any particular Indemnatee from an event which arises from a pre-existing relationship or claim between the Buyer and such Indemnatee.

With respect to this release and discharge, Buyer, on behalf of itself and all of Buyer's Parties, hereby acknowledges that the Released Claims may include Claims of which Buyer is

presently unaware, or which Buyer does not presently suspect to exist, or which may not yet have accrued or become manifest, and which, if known by Buyer on the Effective Date or the Closing Date would materially affect Buyer's release and discharge of Seller and the other Indemnitees, and Buyer, on behalf of itself and all of Buyer's Parties, hereby waives application of the California Civil Code Section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH CREDITOR DOES NOT KNOW OR SUSPECT EXISTS IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Buyer understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that, even if Buyer or any of Buyer's Parties suffer future damages arising out of or resulting from any Released Claims, neither Buyer nor any of Buyer's Parties will be able to make any claim for those damages against Seller or any other Indemnitee. Furthermore, Buyer acknowledges that it intends these consequences for any such Claims which may exist as of the date of this release but which Buyer does not know exist, and which, if known, would materially affect Buyer's decision to execute this Agreement, regardless of whether Buyer's lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause.

GA
Buyer's Initials

B. Survival. The provisions of this Section 2 shall survive the closing of the Agreement.

3. Dispute Resolution

A. Court Trial. Each party to this Agreement hereby expressly waives any right to trial by jury with respect to any claim, demand, action or cause of action (1) arising under this Agreement, including, without limitation, any present or future modification thereof, or (2) in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to this Agreement (as now or hereafter modified) or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether such claim, demand, action or cause of action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of any right they might otherwise have to trial by jury. The parties shall be entitled to recover only their actual damages, and no party shall be entitled to recover any consequential damages, punitive damages, or any other damages that are not actual damages.

B. Venue. Any action shall be commenced and maintained in the Court. The parties irrevocably consent to jurisdiction and venue in such Court and agree not to seek transfer or removal of any action commenced in accordance with the terms of this article.

4. Default by Buyer

A. DEFAULT BY BUYER. UPON DEFAULT BY BUYER, SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO BUYER AND THE ESCROW HOLDER. IN SUCH EVENT, ESCROW HOLDER SHALL RELEASE THE DEPOSIT TO SELLER, AND SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND, EXCEPT FOR BUYER'S INDEMNITY AND OTHER SPECIFIC OBLIGATIONS REFERRED TO HEREIN WHICH MAY BE ENFORCED BY SELLER, NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER. IN THE EVENT THE CLOSING DOES NOT OCCUR BECAUSE OF BUYER'S DEFAULT, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH DEFAULT; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT: (1) LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES; (2) WAIVE OR AFFECT BUYER'S INDEMNITY OBLIGATIONS AND SELLER'S RIGHTS TO SUCH INDEMNITY; OR (3) WAIVE OR AFFECT BUYER'S OBLIGATIONS TO RETURN OR PROVIDE TO SELLER DOCUMENTS, REPORTS OR OTHER INFORMATION PROVIDED TO OR PREPARED BY OR FOR BUYER PURSUANT TO APPLICABLE PROVISIONS OF THIS AGREEMENT. THEREFORE, BUYER AND SELLER DO HEREBY AGREE THAT AS OF THE EFFECTIVE DATE, A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AN AMOUNT EQUAL TO THE DEPOSIT (WHICH INCLUDES ANY ACCRUED INTEREST THEREON). SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389.

GA
Buyer's initials

TH
Seller's initials

B. Default by Seller; Exculpation. Subject to Section 1.C of this Addendum, above, if the sale of the Property is not consummated because of a material default by Seller under this

Agreement, Buyer's sole remedy shall be to (i) terminate this Agreement and recover the deposit set forth in Section 1.A of the Agreement, or (ii) specifically enforce Seller's obligations to convey the Property and recover professional fees and costs. In no event shall Buyer seek or attempt to obtain any recovery or judgment against any of Seller's Indemnitees, members, shareholders or partners (or their constituent members, shareholders or partners) or any director, officer, employee or shareholder of any of the foregoing.

IN WITNESS THEREOF, this Addendum to Land Purchase Agreement is executed and delivered by Buyer and Seller as of the Effective Date.

SELLER:

FreeTrade Partners, Suntec Partners, Via 188
Partners, collectively, California Partnerships

By: Thomas C. Hebrank
Name: Thomas C. Hebrank
Its: Receiver

BUYER:

Carl Owen
, an individual

, an individual



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SELLER COUNTER OFFER No. 1
May not be used as a multiple counter offer.
(C.A.R. Form SCO, 11/14)

Date January 25, 2017

This is a counter offer to the: ☒ Purchase Agreement, ☐ Buyer Counter Offer No. _____, or ☐ Other _____ ("Offer"),
dated January 17, 2017, on property known as Tecate Rd, Tecate, CA 91980 ("Property"),
between Gerardo Aceves ("Buyer")
and Thomas C. Hebrank, Receiver ("Seller").

1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:
- A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
 - B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.
 - C. **OTHER TERMS:** Item #1 - See Receiver's Addendum attached - That certain Addendum to California Vacant Land Purchase Agreement (VLP) and Joint Escrow Instructions (Addendum) is hereby incorporated by reference as a material term of this Seller Counter Offer. Item #2 - Seller has reviewed your offer and is requesting your "Highest & Best" price and terms to be submitted. Item #3 - VLP Section 8 Other Terms to read as follows: Vacant Land Purchase Agreement (VLP) includes APN's 652-110-06-00, 652-110-09-00, 652-110-10-00, and 652-110-11-00. Item #4 Title & Escrow to be Seller's Choice.

D. The following attached addenda are incorporated into this Seller Counter offer: ☐ Addendum No. _____
☒ Receiver's Addendum ☐

2. **EXPIRATION:** This Seller Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
- A. Unless by 5:00pm on the third Day After the date it is signed in paragraph 4 (if more than one signature then, the last signature date)(or by ☐ AM ☐ PM on _____ (date)) (i) it is signed in paragraph 5 by Buyer and (ii) a copy of the signed Seller Counter Offer is personally received by Seller or _____, who is authorized to receive it.
 - OR B. If Seller withdraws it anytime prior to Acceptance (CAR Form WOO may be used).
 - OR C. If Seller accepts another offer prior to Buyer's Acceptance of this counter offer.

3. **MARKETING TO OTHER BUYERS:** Seller has the right to continue to offer the Property for sale. Seller has the right to accept any other offer received, prior to Acceptance of this Counter Offer by Buyer as specified in 2A and 5. In such event, Seller is advised to withdraw this Seller Counter Offer before accepting another offer.

4. **OFFER: SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.**
Seller Thomas C. Hebrank Thomas C. Hebrank, Receiver Date 1/25/17
Seller _____ Date _____

5. **ACCEPTANCE: I/WE** accept the above Seller Counter Offer (If checked ☐ **SUBJECT TO THE ATTACHED COUNTER OFFER**) and acknowledge receipt of a Copy.
Buyer Gerardo Aceves Date 1/25/17 Time 8:05 ☒ AM/ ☐ PM
Buyer _____ Date _____ Time _____ ☐ AM/ ☐ PM

CONFIRMATION OF ACCEPTANCE:

(_____/_____) (Initials) Confirmation of Acceptance: A Copy of Signed Acceptance was personally received by Seller, or Seller's authorized agent as specified in paragraph 2A on (date) _____ at _____ ☐ AM/ ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Seller or Seller's authorized agent whether or not confirmed in this document.

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SELLER COUNTER OFFER (SCO PAGE 1 OF 1)

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